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Chapter 6

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Chapter 6

LEGAL ISSUES AND REGULATORY DEVELOPMENTS

This chapter provides information on some important legal issues and recent regulatory developments in the fields of transport and trade facilitation, together with information on the status of the main maritime conventions.

A. IMPORTANT DEVELOPMENTS IN TRANSPORT LAW

Adoption of a new United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea: the Rotterdam Rules

In 2008, after years of deliberation, work on the text of a draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was completed, and a final draft text, as approved by the United Nations Commission on International Trade Law (UNCITRAL) was adopted by the United Nations General Assembly on 11 December 2008. This new United Nations convention, to be known as the “Rotterdam Rules”¹ (hereinafter referred to as “the Convention” or “the Rotterdam Rules”) was open for signing at a special conference held in Rotterdam in September 2009. Thereafter, states will consider whether to become parties

to the new Convention; 20 ratifications are required for the Convention to enter into force.² In this context it is important to note that ratification of the Convention is conditional upon denunciation of any other international convention in the field of carriage of goods by sea. That is to say, for Contracting States to any other international sea-carriage convention, ratification of the Rotterdam Rules becomes effective only if and when denunciation of the Hague Rules,³ the Hague-Visby Rules⁴ or the Hamburg Rules,⁵ as the case may be, has become effective.⁶ Thus, adherence to the Rotterdam Rules requires an unequivocal decision that, on balance, national interests are better served by the new Convention, rather than by any of the established international maritime cargo-liability regimes.⁷

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Background

By way of background, it should be noted that the regulation of liability arising in connection with the international carriage of goods

by sea has, over the past decades, become increasingly diverse. Many states are Contracting States to the Hague Rules or the Hague-Visby Rules. The 1978 United Nations Convention on the Carriage of Goods by Sea (the Hamburg Rules), which entered into force in 1992, was designed to provide a modern successor to the Hague-Visby Rules, but failed to attract widespread acceptance; although the Hamburg Rules are now in force in 34 states, none of the major shipping nations has ratified the Convention. As a result, three mandatory liability regimes, namely the Hague Rules, the Hague-Visby Rules and the Hamburg Rules, have come to coexist internationally. At the same time, the exponential growth of containerization and the consequent change of international transport patterns and requirements have increased the need for appropriate modern regulation. In relation to multimodal transportation, no uniform international liability regime is in force, and the international legal framework is particularly complex, as liability continues to be governed by existing unimodal conventions, and by increasingly diverse national, regional and subregional laws and contractual agreements.⁸

It is against this background that the new Rotterdam Rules were prepared, with the aim of establishing a modern set of internationally uniform rules that provide commercial parties with much-needed legal certainty. States will now have to carefully consider the merits of the new Convention and decide whether the Rotterdam Rules comply with their expectations, both in terms of its substantive provisions and in terms of its potential to provide international uniformity of laws in the field.

The substantive work was carried out by an UNCITRAL working group, established by the UNCITRAL Commission.⁹ Together with a number of other interested intergovernmental and non-governmental organizations, the UNCTAD secretariat has been participating in the relevant UNCITRAL working group meetings as an observer and has provided substantive analytical comments for consideration by the working group throughout the drafting process.¹⁰ While proper consideration of the Convention's individual provisions or a comprehensive summary of its content is not possible here,¹¹ an analytical overview of some of its central features is provided, with a view to assisting

policymakers in their assessment of the potential merits of ratification of the new Convention. As will be seen, many aspects of the new Convention appear potentially problematic, in particular from the perspective of small- and medium-scale shippers in developing countries.¹²

Substantive scope of coverage

The Rotterdam Rules consist of 96 articles which are contained in 18 chapters. Many of the provisions are lengthy and highly complex, which, unfortunately, makes national differences in their interpretation and application likely and may give rise to significant litigation.¹³ To a large extent, the Convention covers matters that are dealt with in the existing maritime liability regimes, namely the Hague-Visby Rules and the Hamburg Rules, albeit with significant changes in terms of structure, wording and substance. In addition, several chapters are devoted to matters currently not subject to international uniform law such as delivery of the goods¹⁴ and the transfer of the right of control and of rights of suit.¹⁵ The new Convention also provides for electronic communication and the issue of electronic substitutes for traditional paper documents, largely by recognizing contractual agreements in this respect and by according electronic records a similar status to paper-based documents.¹⁶

Two separate chapters provide complex rules on jurisdiction and arbitration.¹⁷ These chapters are, however, optional, and will only be binding on Contracting States that have declared their intention to be bound – a state of affairs which may give rise to parallel legal proceedings in

different Contracting States, and ultimately, conflicting judgments.

Scope of application¹⁸

The Rotterdam Rules apply to contracts of carriage¹⁹ in which the places of receipt and delivery are in different States, provided the contract involves an international sea leg and the contractual place of receipt, loading, discharge or delivery is located in a Contracting State (article 5). The Rules do not apply to charter parties or to “other contracts for the use of a ship or for any space thereon” and to contracts of carriage in non-liner transportation, except where “there is no charter party or other contract for the use of a ship or of any space thereon and a transport document or an electronic

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transport record is issued” (article 6). However, in these cases, the Rotterdam Rules would apply as between the carrier and consignee, controlling party or holder that is not an original party to a contract excluded under article 6 (article 7).

*Multimodal transport*²⁰

Importantly, and in contrast to the existing international maritime regimes, the Rotterdam Rules have a broad scope of application and also cover contracts for multimodal transportation that involve an international sea leg, irrespective of which mode of transport is dominant.²¹ While at present there is no international convention in force to govern multimodal transportation, the extension of the Convention’s scope of coverage to multimodal transport involving a maritime leg was subject to considerable controversy throughout the negotiations, as was the text of the relevant provisions in the Rotterdam Rules.²² This was due, in particular, to: (a) concerns about the potential for conflict with unimodal conventions in the field of road, rail, air and inland waterway carriage, which in many instances also apply to loss arising during a particular stage of a multimodal transport; (b) the desire by some states to ensure the continued application of existing national law on multimodal transportation; (c) concerns about further fragmentation of the law applicable to international multimodal transportation; and (d) the fact that the substantive content of the liability regime is based exclusively on considerations and principles applicable to sea carriage, rather than multimodal transportation.²³

The issue of potential overlap/conflict with existing international conventions applicable to road, rail, air and inland waterway carriage²⁴ has, to some extent, been addressed in a separate provision (article 82), which gives precedence to these conventions to the extent that they apply beyond pure unimodal transportation by road, rail, air and inland waterway, respectively.²⁵ However, otherwise, substantive rules pertaining to other modes of transport come into play only in relation to losses “arising solely before or after sea carriage”, and only in the form of “mandatory provisions on the carrier’s liability,

limitation of liability and time for suit” contained in any “international convention that would have applied mandatorily” to the stage of carriage where the loss occurs, had a separate unimodal transport contract been made (article 26). Such mandatory provisions would, in a cargo claim, need to be applied in context with the remainder of the provisions of the Rotterdam Rules – a difficult task for courts in different jurisdictions, which may be expected to result in internationally diverging judgments. In all other cases, that is to say where no international unimodal convention would have been applicable to the claim in question, or where a loss could not be (sufficiently) attributed to any particular modal stage of a multimodal transport, the provisions

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of the Rotterdam Rules, i.e. of a substantively maritime liability regime, would apply to determine the parties’ rights and the extent of any liability. Existing national laws on multimodal transportation will play no role in relation to contracts falling within the scope of the new Convention.

*Liability of the carrier*²⁶

The carrier (as well as any maritime performing party, such as a terminal operator)²⁷ is under a number of obligations, breach of which gives rise to liability for damage to, loss of or delay in delivery²⁸ of the goods. The liability of the carrier under the Rotterdam Rules is subject to financial limitation (article 59),²⁹ with limitation amounts higher than in the Hague-Visby Rules or Hamburg Rules³⁰ and subject to a two-year time bar (article 62), which may be extended by declaration (article 63). The carrier may lose the right to financial limitation of liability in case of recklessness or intention (article 61).

The carrier’s main obligations include the duty to carry the cargo and deliver the goods to the consignee (article 11), a duty of care during the carrier’s period of responsibility, i.e. from receipt to delivery of the goods (articles 13 (1) and 12), and a duty to exercise due diligence to make and maintain the vessel seaworthy (article 14);³¹ this includes (a) the physical seaworthiness of the vessel; as well as (b) manning, supply and equipment; and (c) the cargoworthiness of the vessel. In contrast to the Hague-Visby Rules, the seaworthiness

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obligation is a continuous one, applying throughout the carriage, and there is no general reversal of the burden of proof regarding the exercise of due diligence (cf. article IV, r.1 of the Hague-Visby Rules). Instead, the central provision dealing with liability of the carrier for loss, damage or delay in the context of a cargo claim, article 17, which sets out a list of exceptions to liability, including some that differ from the list in article r. 2 of the Hague-Visby Rules,³² also contains detailed and complex rules on burden of proof.

Worth noting in this respect are a number of points which are of particular relevance in the context of contracts conducted on the carrier's standard terms, i.e. contracts of adhesion. First, the carrier's period of responsibility (from receipt to delivery) may be contractually defined (i.e. restricted), to cover only the period from initial loading to final unloading under the contract (article 12 (3)). Secondly, the carrier's responsibility for certain functions, such as loading, handling, stowing and unloading may be contractually transferred to the shipper, documentary shipper³³ or consignee (article 13 (2)). Thirdly, the carrier's liability for special cargo and for live animals may be contractually limited or excluded (article 81). Therefore, a carrier may only be liable from loading to discharge and for only some of a carrier's functions set out in the Convention.

Moreover, the rules on burden of proof³⁴ within the scheme of the Convention appear to differ significantly from those in the established maritime liability conventions, favouring the carrier, in particular in cases where unseaworthiness of the vessel has contributed to a loss.³⁵ The Rotterdam Rules envisage proportional allocation of liability in these cases, whereas under the Hague-Visby Rules a carrier would be liable in full, unless it could prove the proportion of loss not due to breach of its seaworthiness obligation. This reflects an important shift in commercial risk allocation to the detriment of shippers.

*Liability of the shipper*³⁶

The shipper's obligations and liability are more extensive than in the Hague-Visby Rules and are set out in some detail in a separate chapter (chapter 7). They include fault-based liability relating to the preparation and delivery for carriage of the goods (article 27) and in respect of wide-

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ranging information and documentation requirements (article 29), which may become particularly relevant in the context of new maritime security requirements.³⁷ They also include strict liability (see article 30 (2)) for loss arising from the shipment of dangerous cargo (article 32) and the failure to provide timely and accurate contract particulars (article 31 (2)).

Importantly, the relevant rules on burden of proof³⁸ are more onerous than under existing maritime liability regimes, which could have important practical implications for the outcome of claims by the carrier against the shipper, in particular in cases where unseaworthiness of the vessel may have contributed to a loss arising from the carriage of dangerous cargo. Thus, whereas under the Hague-Visby Rules, in cases where unseaworthiness can be identified as a contributory cause, a shipper would in most instances be free from liability. Under the Rotterdam Rules, a shipper could become liable in full for any of the potentially extensive losses sustained by the carrier (e.g. loss of a vessel, third-party liability). In this context, it is worth highlighting that the potentially very extensive liability of the shipper is not subject to any monetary limitation.³⁹

A final consignee who makes a claim under the contract may also become liable for breach of any of the shipper's obligations.⁴⁰ Moreover, a so-called "documentary shipper", i.e. a party who is not the contracting shipper but who "accepts to be named as "shipper" in the transport document"(article 1(9)), such as an FOB seller, is also liable for any breach of a shipper's obligations, in addition to the shipper himself (article 33).

Delivery of the goods

It should also be noted that there is a separate chapter dealing with delivery of the goods (chapter 10), providing for a new obligation on the part of the consignee to accept delivery of the goods from the carrier (article 43) and including detailed rules on delivery of the goods under different types of transport documents/electronic records. Importantly, the chapter also includes complex new rules to effectively shift the risk of delayed bills of lading from carrier to consignee: in cases where the final consignee/endorsee of goods shipped under a negotiable transport document (i.e. a bill of

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lading), typically a CIF⁴¹ buyer in a chain of contracts, is notified of the arrival of the goods at destination, but (a) is late in requesting delivery of the goods from the carrier, for whatever reason, or (b) is not yet in possession of the bill of lading, the carrier may, in certain circumstances, deliver the goods without the need for surrender of the bill of lading (article 47), or invoke wide-ranging rights to dispose of the goods (article 48). Thus, a final consignee/endorsee, having paid his seller, under a CIF contract, against tender of a negotiable transport document, may be left empty-handed and unable to sue the carrier for misdelivery. The provisions, apparently intended to provide a solution to the practical problem of negotiable bills of lading being delayed in a chain of international transactions involving different buyers and banks, may seriously undermine the document of title function of the negotiable bill of lading, which is key to its use in international trade.⁴²

Mandatory nature of liability

Article 79 sets out the general rule on mandatory application of the liability regime. Accordingly, unless otherwise provided in the Convention, a contractual term is void (a) if it excludes or limits the obligations or liability of the carrier or maritime performing party; and (b) if it excludes, limits or increases the obligations or liability of shipper, consignee, controlling party, holder or documentary shipper (e.g. FOB seller). Thus, in contrast to the Hague-Visby Rules, it is not only the carrier who is subject to mandatory minimum liability standards under the Convention, but also the shipper (and potentially anyone liable for breach of the shipper's obligations, such as the consignee and documentary shipper). While the carrier's liability, which is subject to a financial cap, may be increased contractually, the shipper's liability may not. However, it should again be noted that the shipper's mandatory liability under the Rotterdam Rules is, in any event, not subject to any monetary limitation.

So-called "volume contracts", which for the first time are regulated in an international convention, are subject to special rules providing for extensive freedom of contract. This represents an important novel feature, distinguishing the new Rotterdam Rules from existing conventions in the field and, therefore is of particular interest.

By establishing minimum levels of carrier liability, which apply mandatorily and may not be contractually modified, existing liability regimes seek to ensure the protection of cargo interests with little bargaining power, i.e. small shippers and third-party consignees, against unfair contract terms unilaterally introduced by the carrier in his standard terms of contract.

*Volume contracts*⁴³

Although in general minimum standards of liability apply to contracts covered by the Rotterdam, this is subject to an important exception. So-called "volume contracts", which for the first time are regulated in an international convention, are subject to special rules providing for extensive freedom of contract. This represents an important novel feature, distinguishing the new Rotterdam Rules from existing conventions in the field, and therefore it is of particular interest. By way of background, it seems appropriate to

briefly recall the rationale for mandatory regulation of liability in a field where commercial parties contract with one another, and therefore, normally freedom of contract reigns.

All international liability regimes for the carriage of goods by sea currently in force (i.e. the Hague, Hague-Visby and Hamburg Rules) establish minimum levels of carrier liability, which apply mandatorily, that is to say the relevant substantive rules on liability of the carrier may not be contractually modified to the detriment of the shipper or consignee.⁴⁴ Contractual increase of the carrier's liability is, however, permitted.⁴⁵ The mandatory scope of application of the relevant regimes extends to contracts of carriage which are not individually negotiated between the parties, but are conducted on the carrier's standard terms, as typically contained in or evidenced by a bill of lading or other transport document issued by the carrier.⁴⁶

The main purpose of this approach, common to all established international liability regimes, is to reduce the potential for abuse in the context of contracts of adhesion, used where parties with unequal bargaining power contract with one another. In liner carriage, where few large liner companies dominate the global market⁴⁷ and goods are typically shipped under bills of lading or other standard form documents – issued and signed by the carrier and usually drafted in terms favourable to the carrier, with no scope for negotiation

– the potential for abuse arising from the unequal bargaining power of the parties is particularly obvious. By establishing minimum levels of carrier liability, which apply mandatorily and may not be contractually modified, existing liability regimes seek to ensure the protection of cargo interests with little bargaining power, i.e. small shippers and third-party consignees, against unfair contract terms unilaterally introduced by the carrier in his standard terms of contract. Thus, a central feature of the established international legal framework is a restriction of freedom of contract with the legislative intent of ensuring the protection of small shippers and consignees against unfair standard contract terms.

Against this background, the regulation on volume contracts in the Rotterdam Rules, providing contracting parties with extensive freedom of contract, proved to be highly controversial throughout the drafting process.⁴⁸

A volume contract is very broadly defined as “a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of quantity may include a minimum, a maximum or a certain range” (article 1(2)). Parties to a volume contract may derogate from the provisions of the Convention (article 80), subject to certain conditions⁴⁹ and subject to some relevant statutory limits on the right to derogate.⁵⁰

These include – on the carrier side – the loss of the right to financial limitation of liability in case of recklessness or intention (article 61); and the obligation, under articles 14(a) and (b) to make and keep the ship seaworthy and to properly crew, equip and supply the ship. Not mentioned in this context is the third aspect of the carrier’s seaworthiness obligation, i.e. the obligation to make and keep the vessel cargoworthy (see article 14(c)); therefore, contractual derogation in this respect would, quite surprisingly, be permitted. As far as the shipper’s obligations and liabilities are concerned, no derogations are permitted regarding (a) the duty to provide documentation, instructions and information under article 29; and (b) the obligations and (strict) liability arising in the context of dangerous goods, under article 32.

It is important to note that a shipper’s liability arising from breach of articles 29 and 32 – which may be

extensive, such as in the case of loss of or delay of a vessel, and is not subject to monetary limitation – may not be contractually excluded, limited or modified. This means that a shipper would always be exposed to potentially extensive (and unlimited) liability under the Rotterdam Rules for losses arising from the carriage of dangerous cargo or breach of the obligation to provide certain documentation, information and instruction.⁵¹

Volume contracts are exempt from the mandatory scope of application of the liability regime, based on the proposition that these types of contract are concluded between parties of potentially equal bargaining power.⁵² However, the definition of “volume contract” is extremely wide and no minimum quantity of cargo is prescribed. As a result, almost any type of contract in the liner trade might be devised as a volume contract, subject to almost complete freedom of contract. Given that liner carriage is dominated by a small number of global liner-carriage operators,

concerns arise about the position of small shippers, who might face contractual terms unilaterally set by the carrier. Against this background, a central question is whether the statutory safeguards included in the Rotterdam Rules are effective to protect small parties against the use of volume contracts

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as contractual devices to circumvent the mandatory liability regime.

As between carrier and shipper, derogations from the Convention set out in a volume contract⁵³ are binding, even if the contract has not been individually negotiated.⁵⁴ Although the shipper must be given the opportunity to contract on terms of the Convention, without derogation,⁵⁵ in practice, a shipper may find itself under commercial pressure to agree to a volume contract, such as a much higher freight rate that would apply unless consent was given. Similarly, while third parties are only bound by volume contracts if they expressly consent to be bound,⁵⁶ it is not clear whether this will ensure the effective protection of small third-party consignees, who in practice may find that their only commercially viable choice is to give their consent. Thus, depending on the approach taken by courts in the application of the relevant provisions, it remains to be seen whether the statutory safeguards are adequate to ensure that notional agreement of a volume contract may not be used as a contractual device to circumvent otherwise applicable mandatory liability rules to the detriment of a small shipper or consignee.

The provisions on volume contracts may, if and when the Convention enters into force, have important repercussions, both for commercial contracting practice and, more generally, for the prospects of international legal uniformity in the field of carriage of goods. If, in future practice, the use of volume contracts with contractual modification of the provisions of the Convention becomes the norm, the potential benefits associated with a predictable internationally uniform liability regime may, in the longer run, fail to materialize.

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Concluding remarks

As is true in respect of any new international convention, much will depend on what courts in different jurisdictions make of the complex provisions of the new Convention and how they interpret and apply them in practice. However, as the above analysis shows, there are a number of areas of potential concern, in particular from the perspective of small and medium-sized shippers and consignees in developing countries.

Overall, it appears that the Rotterdam Rules are in substance more favourable to carriers than any of the existing international conventions in the field. Thus, the rules on burden of proof, for instance, seem to be more advantageous to carriers than those in the Hague-Visby or Hamburg Rules, with potentially important consequences for the outcome of legal disputes between carrier and cargo interests. Moreover, the obligations and liability of the shipper, which are much more extensive and detailed than under existing maritime liability regimes, are mandatory, and the shipper's liability is – in contrast to the liability of the carrier – not subject to any monetary limitation. As a matter of policy, this important shift in commercial risk allocation to the detriment of shippers may be of concern to those representing the interests of transport users.⁵⁷

The provisions in chapter 10 which, under certain circumstances, permit the carrier to deliver the goods without surrender of a negotiable transport document are new and potentially problematic, as they may undermine the document of title function of the negotiable bill of lading, which is key to its use in international trade.

The regulation of volume contracts in the Rotterdam Rules, also new and untested, may lead to a state of affairs in which freedom of contract becomes the norm and in

which strength of bargaining power matters more than it has since the advent of the Hague Rules in 1924. This would be of particular concern from the perspective of small shippers and consignees, who as a result of commercial pressure might find themselves bound by contractual terms effectively set unilaterally by one of a small number of large global liner-carrying companies. Larger shippers too should be aware that their potentially extensive liability under the Rotterdam

Rules for loss arising (at least in part) from the carriage of dangerous goods would be non-negotiable, even in the context of a volume contract. More generally, extensive use of volume contracts in future commercial contracting practice could mean effectively less rather than more uniformity of liability rules at the international level.

In relation to regulation of liability arising from multimodal transport involving an international sea leg, the new Convention adopts an approach which is complex and may give rise to difficulties in its practical application. Substantive liability rules vary, depending on whether a loss may be attributed to a particular non-sea leg of the multimodal transport and on whether existing international conventions governing carriage of goods by land or air would have applied had a separate contract been made for that particular leg of the transport. In summary, the position appears to be as follows:

- (a) in cases where a loss was not clearly attributable to a particular modal stage of transport, as will often be the case in containerized transport, the substantively maritime liability regime set out in the Rotterdam Rules would determine the rights and liabilities of the contracting parties, even if the transport was carried out mainly by land;
- (b) the position would be the same in cases where a loss arose during land transport, but none of the existing unimodal international conventions would have been applicable, had a separate contract been made for the relevant land leg of transportation;
- (c) in cases where a loss could be attributed to a mode of transport other than sea carriage and one of the existing unimodal transport conventions would have applied (had a separate contract

been made), the mandatory provisions on carrier liability, limitation of liability and time for suit contained in the relevant unimodal convention would apply, together with the remainder of the Rotterdam Rules. The mixture of substantive rules from different international conventions which courts in different jurisdictions would, in these cases, need to apply in context is highly complex and clearly likely to lead to nationally differing results.

More generally, the complexity and considerable scope for interpretation inherent in the Convention means that extensive litigation may be required to gain a clear understanding of the new rules, with courts in different jurisdictions adopting potentially differing approaches to interpretation and application of the provisions.⁵⁸ The likelihood of conflicting legal proceedings, and ultimately, conflicting judgments at the international level is further compounded by the fact that, as already noted,⁵⁹ chapters in the Convention setting out rules on jurisdiction and arbitration are optional for Contracting States, and as a result, contractual jurisdiction and arbitration clauses may be valid under the same conditions in only some but not all Contracting States.

Thus, much costly litigation may be required, before a desirable degree of legal certainty may be achieved. This prospect appears to be particularly unfortunate in respect of a new international Convention which aims to establish internationally uniform rules in a variety of jurisdictions; it may also be of concern to commercial parties whose rights and liabilities may in future be regulated by the Rotterdam Rules.

B. NEGOTIATIONS ON TRADE FACILITATION AT WTO

1. Facilitating trade and transport: How can WTO disciplines help?

Negotiations on trade facilitation have been ongoing since 2004 as part of the World Trade Organization (WTO) Doha Development Round of trade negotiations. With these negotiations, members aim at expediting the release, clearance and movement of goods. Other objectives of the negotiations are to enhance technical

assistance and support for capacity-building, and to draft provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation. Trade-supporting service providers and importers and exporters alike stand to gain from these negotiations, mainly through the simplification and harmonization of procedures and formalities in the cross-border movement of goods and enhanced transparency.

The WTO system is based on legal disciplines which ensure trade openness and liberalization. Since 1947, the General Agreement on Tariffs and Trade (GATT) (originally drafted in 1947 and incorporated without any changes in the WTO agreement in 1994) in its articles

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X, VIII, and V contains disciplines pertaining to the administration and publication of trade regulations (article X), the fees and formalities connected with importation and exportation (article VIII), and the freedom of transit (article V). Against the background of the wide-ranging tariff reductions achieved in the Uruguay Round, efforts to address non-tariff barriers to trade have become more pressing in recent years. The increased use of information technologies and electronic information transmission, together with globalized production

networks with reduced inventories, have led countries to seek the review, clarification, and improvement of the relevant GATT disciplines so as to include trade facilitation disciplines as another cornerstone of the multilateral trading system.

2. 2009: Trade facilitation negotiations pick up momentum

The negotiations on trade facilitation are an integral part of the Doha trade negotiations. This means that negotiations on trade facilitation are dependent on progress made in the other areas of the Doha Round. The failure to reach an agreement on the main areas of the Doha Round in July 2008 also affected the meetings of the WTO Negotiating Group on Trade Facilitation (NGTF). In particular at the end of 2008 and the beginning of 2009 the overall pace of negotiations in the NGTF slowed down, with less time being devoted to the review of the textual proposals, and comments made by delegations limited to oral interventions. This

situation changed in the second half of 2009, when signs of a possible compromise on contentious issues of the Doha Round emerged, and the delegates adopted an ambitious work plan for the period up until the ministerial conference scheduled for early December 2009. Delegations are now aiming at finalizing a first draft text for a new WTO agreement on trade facilitation by that date.

By the end of 2006, delegations had put forward more than 70 trade facilitation measures for consideration in the negotiations. These measures were grouped into 14 categories, ranging from the publication of trade-related regulations to the clearance and movement of goods and the cross-border exchange of customs information. During 2007 and 2008, these provisions were further consolidated, where possible, so that in early 2009 the core set of proposed measures was narrowed down to 42 measures in 12 categories. Furthermore, the proposed measures have now been drafted using legal language, so that the proposals reflect concrete legal obligations. Negotiations in 2009 concentrated on reviewing and further refining the proposed text of these legal provisions. For this purpose the NGTF meets in informal drafting sessions, during which the text of each of the proposed provisions is examined, and comments or alternative drafting suggestions by delegations are incorporated.

3. Measures proposed: Improvements to transparency, delays and international transit

When time matters

A major part of the trade facilitation measures proposed focuses on the time needed for the release and clearance of goods, taking into account not only the loss of time, but also its consequences in terms of possible damages, missed trading opportunities and increased costs, affecting the competitiveness of the products.

To address this issue, members propose, for example, that average release and clearance times at border posts should be recorded and published; this would allow traders to make informed decisions and weigh possible delays. Further proposals include:

- (a) The review and simplification of existing procedures, formalities, fees, and the payment of those fees;
- (b) The introduction of risk management, and in combination with it, the introduction of post-clearance audit procedures to reduce incidences of physical inspection;
- (c) The possibility for advance processing and the release of goods with final determination of customs value and duty payment still pending, in order to enable faster release at arrival;
- (d) The setting up of a single window, and the acceptance by authorities of commercially available documents and copies to reduce both the number of documents and of submission points;
- (e) The possibility of awarding special simplified procedures to economic operators with a good track record of compliance, so-called Authorized Economic Operators or traders, or to those with special needs, such as, for example, express shipment carriers;
- (f) Elimination of pre-shipment inspections and the mandatory use of customs brokers.

When transparency matters

Another very important area of the proposals focuses on strengthening transparency. Transparency provisions are at the heart of WTO, as they are crucial for improving governance and confidence in the trading system. In addition to the current non-selective manner of the transparency provisions contained in GATT, proposals submitted in the NGTF attempt to determine a list of selective documents which countries should publish. This list should also include new information requirements, such as descriptive outlines of import and export procedures, and the required forms. Furthermore, members are also concerned with access to published information. Current proposals prescribe the means of publication; they newly include the internet, and dissemination through enquiry points. This would allow information to be provided in a more user-friendly and accessible way.

Similar to provisions in the WTO agreement on rules of origin, members seek to introduce legally binding advance rulings applying to customs areas such as the classification and the objective criteria of valuation. Advance rulings enhance predictability and certainty for traders.

When governance matters

Finally, members also proposed strengthening good governance in trade. In this respect, countries should hold regular consultations with private sector stakeholders, coordinate the responsibilities and operations of the various public agencies present at the borders, and strengthen the appeal systems.

When transit is essential

Landlocked countries have attached high priority to the review of GATT article V, which deals with freedom of transit. In the negotiation process, proposals in this area are, therefore, often submitted jointly by several landlocked countries. Transit countries regularly continue to debate and question them, in particular when it comes to the issue of restrictions on the freedom of transit, whether these are legitimate or are perceived as illegitimate. The limited amount of legal interpretation of the principle of freedom of transit weighs heavily over these discussions. Transit fees and charges are under discussion, as is the administration of transit-related guarantee systems.

Furthermore, members have been debating the extent to which the current and the newly proposed disciplines extend to goods moved via fixed infrastructure, such as electricity grids and pipelines. More than 6 per cent of trade by volume is actually moved in pipelines across borders. Some delegations have proposed including dedicated disciplines related to fixed infrastructures in a new agreement.

4. Flexibility versus uniformity – the implementation debate

While negotiating the legal text of the measures, members do not leave out considerations and discussions related to the implementation of the disciplines.

In general, WTO negotiations aim at establishing a set of rules that are applied and can be enforced globally. This requires a uniform set of rules, and at the same time, implementation capacity in all countries. But implementation capacity is what distinguishes members most, and WTO agreements already in existence have suffered considerably from a lack of implementation. The challenge for delegations in these negotiations is, therefore, to draft a set of rules that can be applied uniformly by all

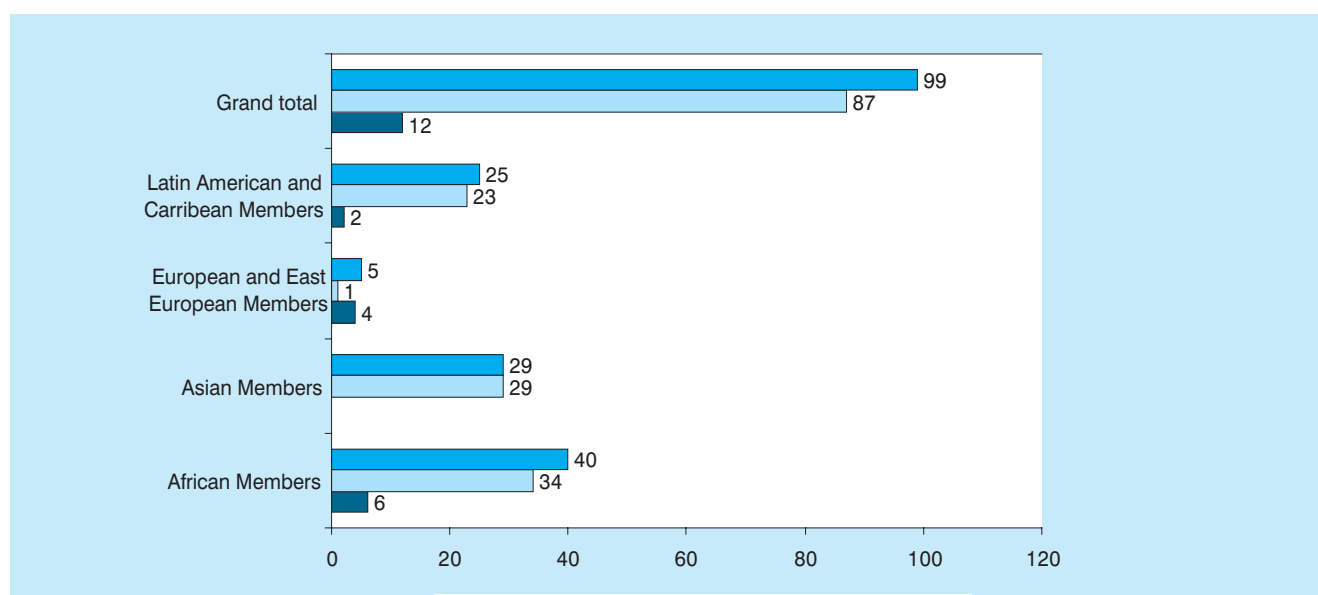
members, while allowing flexibilities for developing countries in their application of the commitments. To achieve this objective, delegations work along two main assumptions: First, the level of ambition of the negotiations should take into account the development context and needs of developing countries; and second, the special and differential treatment (SDT) provisions for developing countries should guarantee them flexibility in implementation, and link the application of the commitments to the acquisition of implementation capacity, through technical assistance and capacity-building provided by the donor community. While SDT provisions in earlier WTO agreements simply allowed full exemptions of application, or transitional periods, in the negotiations on trade facilitation, delegations have been seeking to ensure that implementation capacity is built up.

Level of ambition: countries' trade facilitation needs and priorities

Countries' levels of ambition in the negotiations and their targeted outcomes vary depending on each country's individual context (economic, financial, development or trading), which determines its trade facilitation priorities and needs. The assessment of countries' needs and priorities has therefore been inscribed as a distinct objective in the negotiation mandate. Only a few countries, however, conducted such priority assessments at an early stage of the negotiations – the most active being landlocked developing countries (LLDCs). Later on in the negotiations, other countries followed suit, but with a core set of measures already on the table, they limited the assessments to implementation, and in particular, to technical assistance needs and priorities.

For the purposes of assessing their trade facilitation technical assistance needs and priorities, countries mostly use the WTO Trade Facilitation Self-Assessment Guide, which is based on a gap analysis methodology and was developed by the World Bank in collaboration with other Annex D organizations. The technical assistance support programme was set up by donors at the WTO secretariat to provide support for national trade facilitation self-assessments and was implemented over a two-year period. By September 2009, 96 developing countries had requested assistance, including 31 LDCs, and assistance was provided to date to 69 countries (fig. 25).

Figure 25

WTO trade facilitation needs and priorities: self-assessment status

Source: UNCTAD secretariat.

Flexibilities and capacity acquisition: the discussions on the SDT mechanism

The discussions on the special and differential treatment provisions have brought to light the different expectations of countries with regard to flexibilities for the application of the newly negotiated commitments. In 2009, delegations designated a “Friend of the Chair” to undertake informal discussions on the SDT mechanism and to facilitate consensus-building among members on this issue.

The discussions so far hint at main areas of convergence. Developing countries would have the possibility to differentiate among the negotiated disciplines with regard to the timing and conditions of application. Measures that cannot be implemented at entry into force in a sustainable manner can be notified to the other WTO members and will be considered for different types of flexibilities. The types of flexibilities currently being discussed are: (a) deferred application times; and (b) deferred application times and technical assistance for capacity acquisition. Each developing country would thus submit a schedule of commitments reflecting the categorization of measures by flexibility. Details of the SDT mechanism, such as the modalities and timing of the scheduling of the measures, the monitoring of delivery of technical assistance, and the application of the dispute settlement provisions are still under discussion.

With the negotiations entering a more technical phase and expected to lead to a provisional text of the agreement, a successful conclusion of the negotiations rests on the ability of delegations to reach consensus on the SDT mechanism.

C. OTHER LEGAL AND REGULATORY DEVELOPMENTS AFFECTING TRANSPORTATION

1. Piracy and armed robbery against ships

The great number of disturbing incidents of piracy and armed robbery against ships, particularly off the Somali coast and in the Gulf of Aden, have become an increasing concern not only for the maritime industry that is heavily affected by these incidents, but also for international organizations including the International Maritime Organization (IMO) and the United Nations. Joint efforts are being made in various forums to find adequate responses to piracy, and to ensure that alleged pirates, once caught, are successfully prosecuted and brought to justice. Joint efforts are being made to find adequate responses to piracy.

It should be noted that the 1988 IMO Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) provides a

basis for its States parties to prosecute pirates. Although the Convention does not contain an express definition of piracy and armed robbery against ships, its article 3 (1)(a) stipulates that any person commits an offence if that person unlawfully and intentionally “seizes or exercises control over a ship by force or threat thereof or any other form of intimidation”. Under the Convention, appropriate measures need to be taken by states to make this and other offences punishable by penalties, to establish jurisdiction over those, and to accept delivery of persons responsible for or suspected of committing such offences.⁶⁰

In addition, the 2005 amendments to the SUA Convention introduced provisions covering cooperation and procedures to be followed if a State party desires to board on the high seas a ship flying the flag of another State party, when the requesting party has reasonable grounds to suspect that the ship or a person on board the ship has been or is about to be involved in the commission of an offence under the 1998 SUA Convention (article 8 bis). The authorization of the flag state is required before such boarding.⁶¹

Recent statistics on piracy

Instances of piracy are monitored both by IMO, which circulates monthly and quarterly reports on piracy and armed robbery against ships,⁶² and by the ICC International Maritime Bureau (IMB) – a specialized division of the International Chamber of Commerce (ICC) – which acts as a focal point in the fight against all types of maritime crime and malpractice.⁶³ It should be noted that different definitions of piracy and armed robbery against ships are used by the IMO and the IMB, which explains some differences in the number of recorded instances.⁶⁴ According to the annual 2008 ICC–IMB “Piracy and armed robbery against ships” report, incidents of piracy and armed attacks against shipping increased at an unprecedented rate. A total of 293 incidents were recorded by the IMB for 2008, constituting an 11 per cent increase over 2007 figures. Attacks off Somalia and in the Gulf of Aden, however, rocketed by 200 per cent last year, according to the report. Worldwide, in 2008, a total of 49 vessels were hijacked, 889 crew were taken hostage, and a further 46 vessels were reported as having been fired upon. These figures

The sharp increase in both the number and severity of attacks in waters off the coast of Somalia was noted with concern by the IMO’s Maritime Safety Committee (MSC) at its 85th session in November 2008.

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represented the highest rise in reported hostage-taking and hijackings ever recorded by the IMB’s Piracy Reporting Centre. Thirty-two crew members were injured, 11 were killed, and 21 were missing or presumed dead. The total number of incidents in which guns were used was 139, compared to 72 in 2007.⁶⁵

The sharp increase in both the number and severity of attacks in waters off the coast of Somalia was noted with concern by IMO’s Maritime Safety Committee (MSC) at its eighty-fifth session in November 2008. It was also noted that most of the attacks worldwide had occurred or had been attempted in territorial waters while the ships were at anchor or berthed. In many of the reports received, the crews had been violently attacked by groups of 5 to 10 people carrying knives or guns.⁶⁶ During the eighty-fourth session of the MSC, a correspondence group had been established, in order to review and update the IMO guidance for preventing and suppressing piracy and armed robbery against ships.⁶⁷

After considering the final report of the correspondence group,⁶⁸ and after deliberating on a number of key issues, the MSC at its eighty-sixth session, held from 27 May to 5 June 2009,⁶⁹ agreed on revised guidance, and in this context approved circulars entitled “Recommendations to Governments for preventing and suppressing piracy and armed robbery against ships”⁷⁰ and “Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against ships.”⁷¹ The guidance to shipmasters and crew includes a new annex aimed at those who may be kidnapped or held hostage for ransom, based on the current United Nations Department of Safety and Security guidelines entitled “Surviving as a hostage”, which underwent appropriate modification to be applicable in the maritime context.

It was also agreed that a specific “Guidance on piracy and armed robbery against ships in waters off the coast of Somalia”⁷² should include “Best management practices to deter piracy in the Gulf of Aden and off the coast of Somalia”; these had been developed by industry organizations including the International Association of Independent Tanker Owners (INTERTANKO), the International Chamber of Shipping (ICS), the Baltic and International Maritime Council (BIMCO), the

International Association of Dry Cargo Shipowners (INTERCARGO) and IMB, and were issued by the ICS in February 2009. In addition, the MSC, at its eighty-sixth session, approved a draft resolution containing amendments to the “Code of practice for the investigation of crimes of piracy and armed robbery against ships”,⁷³ for consideration by the IMO Assembly later in 2009.

Multilateral cooperation to combat piracy

The increase in acts of piracy in recent years has led to enhanced cooperation at the international and regional level. For instance, IMO, which has maintained a leading role in the coordination of international efforts to tackle piracy, has taken action to increase awareness of the problem, and in cooperation with the shipping industry advises on measures that ships can take in the event of an attack. Moreover, as part of its technical cooperation programme, IMO is assisting countries in various regions to build capacity, so that they can effectively contribute to overall efforts to combat piracy, including through relevant national legislation.

In response to the unprecedented escalation in the number of acts and attempted acts of piracy and armed robbery off the coast of Somalia and the hijacking of ships and seafarers for ransom in the past few years, the IMO Assembly adopted resolution A.1002(25)⁷⁴ in November 2007. The resolution, inter alia, sets out a number of measures that Governments and the shipping industry should adopt with a view to minimizing the risks of falling victim to such incidents. The resolution requested the Transitional Federal Government of Somalia to take specific actions; called upon the countries in the region to conclude, in cooperation with IMO, a regional agreement to prevent, deter and suppress piracy and armed robbery against ships, and to implement it as soon as possible; and requested the Secretary-General of IMO to consult with Governments and organizations interested in providing technical assistance to Somalia and nearby coastal states, and to enhance the capacity of these states to give effect to the resolution, as appropriate.

In January 2009, a high-level meeting of 17 states from the Western Indian Ocean, Gulf of Aden and Red Sea

areas, which was convened by IMO in Djibouti, adopted a “Code of conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden”. Signatories to the code of conduct undertake wide-ranging commitments to cooperate in seizing, investigating and prosecuting pirates in the region, and to review their relevant national laws. The code of conduct also allows authorized officials to board the patrol ships or aircraft of another signatory. By the end of the first quarter of 2009, nine countries had signed the code of conduct, namely Djibouti, Ethiopia, Kenya, Madagascar, the Maldives, the Seychelles, Somalia, the United Republic of Tanzania, and Yemen.⁷⁵

The increase in acts of piracy in recent years has led to enhanced cooperation at the international and regional level.

The United Nations has also been actively engaged in the process of formulating adequate responses to the challenge of piracy, mainly through the Security Council, but also through other forums.⁷⁶ The

matter of piracy off Somalia was first brought to the attention of the Security Council by IMO in 2005. During 2008, initially at the request of the Transitional Federal Government of Somalia, and later as a result of the escalation of the number of incidents which led to a further deterioration of the situation, the Security Council adopted, under Chapter VII of the Charter of the United Nations, resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1844 (2008), 1846 (2008) and 1851 (2008). These resolutions were intended to address the issue of piracy, including the delivery of humanitarian aid to Somalia and the protection and escorting of

The United Nations has also been actively engaged in the process of formulating adequate responses to the challenge of piracy.

ships employed by the World Food Programme. They also envisaged a number of measures to be put in place by states, with a view to bringing the situation under control.⁷⁷ With the consent of the Transitional Federal Government of Somalia, military personnel from patrolling forces will

be allowed to enter the territorial waters of Somalia for the purpose of suppressing acts of piracy and armed robbery at sea, and to use all necessary means to repress such acts. This will be done “in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law.”⁷⁸

Pursuant to Security Council resolution 1851, the Contact Group on Piracy off the Coast of Somalia was established on 14 January 2009, at a meeting held at the United Nations Headquarters in New York. Its aim is “to facilitate discussion and coordination of actions

among states and organizations to suppress piracy off the coast of Somalia”, and it will report periodically to the Security Council on the progress of its work. The contact group established four working groups to address different piracy-related issues. Working Group 1 will deal with activities related to military and operational coordination and information-sharing, and to the establishment of the regional coordination centre. It will be convened by the United Kingdom, with the support of IMO. Working Group 2 will be convened by Denmark to address judicial aspects of piracy, with the support of the United Nations Office on Drugs and Crime (UNODC). The United States will convene Working Group 3 to strengthen shipping self-awareness and other capabilities, with the support of IMO. Egypt will convene Working Group 4 to improve diplomatic efforts on all aspects of piracy.⁷⁹

Also in response to Security Council resolution 1851 (2008), which had noted with concern the lack of capacity, domestic legislation and clarity about how to deal with pirates following their capture, the IMO Legal Committee, at its ninety-fifth session held from 30 March to 3 April 2009, informed states that the IMO secretariat intended to review existing national legislation to prevent and punish the crimes of piracy and armed robbery at sea as part of IMO’s anti-piracy strategy. In this context, member States were urged to submit information and the texts of their national legislation on piracy.⁸⁰

Other international efforts to coordinate counter-piracy operations include the establishment of the Maritime Security Centre (Horn of Africa), set up by the European Union (EU) as part of the European Security and Defence Policy Initiative, which aims to provide a service to mariners in the region in support of the resolutions of the United Nations Security Council, and the EU–NAVFOR Somalia (Operation Atalanta) naval mission, set up in November 2008 by the Council of the European Union to improve maritime security off the Somali coast by preventing and deterring pirate attacks and helping safeguard merchant shipping in the region.⁸¹ Another multinational task force, namely Combined Task Force 151, comprised of naval forces of the United States, the United Kingdom, Denmark and Turkey, was established to counter piracy operations in and around the Gulf of Aden, the Arabian Sea, the Indian Ocean and the Red Sea. In addition, Chinese and Japanese warships have joined the anti-piracy patrols in the Gulf of Aden

recently. South Africa was also contemplating escorting merchant ships between South Africa and Somalia.⁸² Other individual states, and regional and international organizations such as NATO, have also contributed with their naval forces to efforts at preventing and deterring piracy attacks off the coast of Somalia.⁸³

Recognizing the broader context, the Secretary-General of the United Nations has called for a multifaceted approach to combating piracy “to ensure that the political process and the peacekeeping efforts of the African Union and the strengthening of institutions work in tandem.”⁸⁴

2. Overview of recent developments relating to maritime and supply-chain security

(a) World Customs Organization – SAFE Framework of Standards

The World Customs Organization (WCO), the only intergovernmental organization with worldwide membership exclusively focused on customs matters, is particularly noted for its work on the development of global standards, including in the field of simplification and harmonization of customs procedures, trade supply-chain security, facilitation of international trade, and global customs capacity building programmes, many of which focus on developing countries. In 2005, the Council of the WCO adopted the Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework), which has fast gained widespread international acceptance as the main global supply-chain security framework. As of May 2009, 156 countries had expressed their intention to implement the SAFE Framework.⁸⁵ The core features of the SAFE Framework have been presented in previous editions of the *Review of Maritime Transport*. One of the integral aspects of the customs-to-business network arrangements envisaged by the SAFE Framework is the concept of the Authorized Economic Operator (AEO), defined as a “party involved in the international movement of goods ... that has been approved by or on behalf of national customs administrations as complying with the WCO or equivalent supply-chain security standards. AEOs include, inter alia, manufacturers, importers, exporters, brokers, carriers, consolidators, intermediaries, ports, airports, terminal operators, integrated operators, warehouses and distributors.”⁸⁶ Detailed AEO guidelines were integrated into a revised

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version of the SAFE Framework, in June 2007. The requirements for AEO recognition, applicable to AEOs and/or to customs administrations, were presented in the *Review of Maritime Transport 2008*, but are restated here for ease of reference. A number of elements that need to be satisfied are listed, each of them accompanied by specific detailed requirements applicable to AEOs, to customs, or to both.⁸⁷ These elements include:

- (a) Demonstrated compliance with customs requirements;
- (b) A satisfactory system for management of commercial records;
- (c) Financial viability;
- (d) Consultation, cooperation and communication;
- (e) Education, training and awareness;
- (f) Information exchange, access and confidentiality;
- (g) Cargo security;
- (h) Conveyance security;
- (i) Premises security;
- (j) Personnel security;
- (k) Trading partner security;
- (l) Crisis management and incident recovery; and
- (m) Measurement, analyses and improvement.

It is worth noting that both the national implementation of the AEO system and mutual recognition agreements are, in many cases, still at an initial stage of their development, and remain a challenge, particularly from the perspective of developing economies. For instance, countries around the Pacific Ocean – many of which are developing countries – are grouped under Asia-Pacific Economic Cooperation (APEC),⁸⁸ a forum for discussing matters that concern the regional economy, cooperation, trade and investments. APEC has

been organizing the so-called “STAR” (Secure Trade in the APEC Region) conferences since 2003, to discuss issues of security for transport and travel. An action plan has been adopted by APEC member States in the context of STAR, recommending that companies, in accordance with their own needs, comply with security measures, and with the international standards and requirements laid down by the WCO, IMO, the International Organization for Standardization (ISO) and so on. Several individual APEC countries, mostly developed ones, have already established their own business partner programmes (AEOs and similar), in conformity with the SAFE Framework.⁸⁹ However, unlike the European Union, for instance, which already issues certificates for its AEOs, it appears that no similar certification process is yet under way within the framework of APEC or any other regional organization so far.

According to information provided by the WCO, as of 30 September 2009, in addition to the 27 member States of the European Union,⁹⁰ 11 additional countries had operational AEO programmes,⁹¹ and in another 6 states, such programmes were soon to be launched.⁹² So far, 7 mutual recognition agreements (MRAs) of AEO programmes have been concluded globally;⁹³ with another 12 being negotiated, and 11 studies or consultations being under way. For two more countries, AEO programmes were to become operational, and the conclusion of relevant MRAs with the European Union was scheduled for winter 2010.⁹⁴

To assist countries, the WCO is developing a compendium of existing AEO programmes and implementation guidelines for AEO standards.⁹⁵

In view of the global character of the SAFE Framework of Standards, the question arises whether all WCO member customs administrations will be able to implement it in its entirety. There is a risk that developing countries

lacking the infrastructure and the administrative capacity might not be able to meet all the requirements in respect of security measures, and that their access to global markets could be negatively affected as a result. In this context, and as reported in previous editions of the *Review of Maritime Transport*, the WCO has launched a number of capacity-building programmes,

notably the Columbus Programme: Aid for SAFE trade.⁹⁶ This programme is continuing to help the modernization

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of member customs administrations and to assist in the implementation of the SAFE Framework of Standards, and to prepare countries for the possible outcome of the WTO negotiations on trade facilitation. Within the Columbus Programme, a three-year Technical Cooperation Agreement on Capacity-Building (2009–2011), was signed by the Customs Administration of Mongolia, the Dutch Tax and Customs Administration, and the WCO, on 4 December 2008. The agreed cooperation covers a number of seminars on a range of topics. As part of the ongoing implementation of its capacity-building strategy, the WCO also organizes regional training workshops for the private sector, which among other things, aim at strengthening the links among customs officials from neighbouring countries and ensuring more effective follow-up. To date, 16 memorandums of understanding establishing regional training centres have been concluded by the WCO and the customs administrations of member countries, mainly developing countries.⁹⁷ Moreover, a number of seminars on AEOs were recently organized in various regions, including East Africa, Southern Africa and Central America.⁹⁸

A new WCO report entitled “Customs in the twenty-first century: Enhancing growth and development through trade facilitation and border security”⁹⁹ was issued in June 2008, emphasizing the importance of mutual recognition of both customs controls and AEO programmes. As part of a new strategic direction for customs, “Networked Customs”, including the creation of an international “e-Customs” network, are considered critical for the twenty-first century model of managing end-to-end international supply chains. This relies on the secure, real-time exchange of information between business and customs, and between customs administrations in a supply chain. According to the report, achieving this will require:

- (a) Internationally standardized data requirements for export, transit and import, and the implementation of the WCO Unique Consignment Reference number as part of a cross-border data reference model;
- (b) Interconnected systems and aligned customs databases to enable the electronic exchange of data between customs administrations as early as possible in the international movement of goods;

- (c) Mutual recognition and coordination protocols between exporting, transit and importing administrations to eliminate unnecessary duplication of controls in international supply chains;
- (d) Standards to enable the development of a system of mutual recognition for AEOs; and
- (e) A set of rules governing the exchange of information between customs administrations, including rules on data protection.¹⁰⁰

The simplification, harmonization and standardization of procedures and practices are indispensable for achieving mutual recognition, and for avoiding conflicting and redundant national approaches in relation to AEOs.

Attention should also be drawn to the sixtieth session of the WCO Policy Commission, which was held in Buenos Aires in December 2008. In the context of discussions on the global financial crisis, the Policy Commission emphasized the need to focus on trade facilitation in the current climate, taking care not to introduce new barriers to trade or generate additional delays. It also considered it important that the work on AEOs and mutual recognition arrangements continue, and that as far as possible, these arrangements be implemented with broadly similar standards worldwide. Another important factor was the need to adapt the costs and benefits of such arrangements to reflect the current climate, and also to recognize the importance of budget security, in particular for developing countries.¹⁰¹

(b) *European Union*

As reported in the *Review of Maritime Transport 2008*, at EU level, regulation (EC) No. 1875/2006¹⁰² was adopted in December 2006 to introduce a number of measures to increase the security of shipments into and out of the EU, and to implement regulation (EC) No. 648/2005, which had first introduced the AEO concept into the Community Customs Code. Regulation (EC) No. 1875/2006 includes detailed rules regarding implementation of the AEO programme, and envisages that reliable economic

“Networked Customs”, including the creation of an international “e-Customs” network, are considered critical for the 21st century model of managing end-to-end international supply chains.

operators that meet the conditions and criteria required for recognition of AEO status may be issued with AEO certificates as of 1 January 2008.¹⁰³ It should be noted that an “economic operator” is defined as “a person who, in the course of his business, is involved in activities covered by customs legislation”.¹⁰⁴ This would cover, for instance, a manufacturer producing goods for export, but not a supplier of raw materials already in free circulation, or a transport operator that moves only free-circulation goods within the customs territory of the European Community.¹⁰⁵

Companies seeking AEO status must comply with certain criteria, including an automated trade and transport data management system, proven financial solvency, and adequate safety/security standards (including physical security, access control, screening of personnel etc.) There are three types of certificate that may be applied for:

- (a) Customs Simplifications (AEO-C) – AEOs benefit from certain simplifications provided for under the customs rules;
- (b) Security and Safety (AEO-S) – AEOs benefit from facilitation of customs controls relating to security and safety at the entry or exit of the goods to the customs territory of the Community;
- (c) Customs Simplifications/Security and Safety jointly (AEO-F) – AEOs will be entitled to benefit from both.

A database of economic operators who hold a valid AEO certificate of any type, and who have given their agreement to the publication of their details, has recently become available on the European Commission website.¹⁰⁶ Also available on the website is a list of competent customs authorities for the issuing of AEO certificates. According to EU statistics, as of 14 October 2009, a total of 3,433 applications had been submitted, and a total of 1,643 certificates had been issued; the number of applications processed between 15 October 2008 and 15 October 2009 was 1,972. The reported breakdown by certificate type was: AEO-F 78 per cent; AEO-C 19 per cent; and AEO-S 3 per cent.¹⁰⁷

The EU is in the process of negotiating agreements on mutual recognition of the business partner programmes (AEO and similar) with some neighbouring states and with its major trading partners.

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Additionally, as laid down in regulation (EC) 312/2009,¹⁰⁸ and in order to establish a unique system of registration and identification for economic operators in the European Union, any economic operator established in the European Union, as from 1 July 2009, is required to have a valid registration and identification (EORI) number, used by one of the member States.¹⁰⁹ Economic operators established

outside the EU will have to be assigned an EORI number if they lodge a customs declaration, an entry or an exit summary declaration, or a summary declaration. Many member States will use their current identification systems. Thus, only new operators should register, and the application should be sent to the relevant authorities of the

member States in which the economic operator is established.¹¹⁰

The EU is in the process of negotiating agreements on mutual recognition of the business partner programmes (AEO and similar) with some neighbouring states and with its major trading partners,¹¹¹ including in particular the United States. To this end, in 2007, the European Union and the United States started negotiations towards mutual recognition of the United States’ C-TPAT and the European Union’s AEO supply-chain programmes. The agreement would cover about 40 per cent of global trade, and may set a precedent that could help to provide both improved supply-chain security and global trade facilitation.¹¹² While there are significant differences between the two customs–business partnership schemes, in March 2008, United States Customs and Border Protection (CBP) and the European Commission adopted the “Joint

roadmap towards mutual recognition of trade partnership programmes.”¹¹³

The roadmap focuses on six areas in which to achieve mutual recognition: political, administrative, legal, policy, technical/operational, and evaluation. It was envisaged that the following tasks would be accomplished by the United States and the

European Union, in an effort to achieve mutual recognition by 2009:

- (a) Establishing guidelines regarding the exchange of information, including validation/audit results and legalities associated with the disclosure of membership details;
- (b) Performing joint verifications to determine remaining gaps between AEO/C-TPAT;
- (c) Exploring and testing an export component for C-TPAT;
- (d) Exchanging best practices through joint visits and conferences;
- (e) Continuing dialogue on legal and policy developments under the respective administrations;
- (f) Endorsing and signing a mutual recognition arrangement; and
- (g) Evaluating mutual recognition benefits for AEO/C-TPAT members.¹¹⁴

In order to gather feedback from the business community and incorporate it within the roadmap as appropriate, an abridged external partner version of the roadmap was made available in January 2009,¹¹⁵ providing a short description, and a summary of status and accomplishments for each of the tasks in three areas, namely operational/technical, legal, and evaluation.

The International Chamber of Commerce (ICC), one of the key international representatives of the world business community, has issued a discussion paper that raises a number of concerns regarding mutual recognition of the United States and European Union programmes, and provides a number of recommendations.¹¹⁶ Among other things, the ICC discussion paper expresses concern about the absence of a meaningful dialogue between the designers of the Mutual Recognition programme and the business community, and notes that the benefits for companies participating in the European Union's AEO programme and the United States' C-TPAT have not yet been accurately quantified and tracked, thus making any assumptions regarding the cost-benefit impact on the industry speculative. The

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ICC discussion paper expresses great concerns about the potential impact of these programmes on small and medium-sized enterprises (SMEs), and emphasizes the need to assure the suitability of these programmes for all supply-chain entities, highlighting that "the costs of implementation and compliance may be such that many SMEs will be unable to participate, which could impact their competitiveness". Certainly, this applies particularly to SMEs from developing countries. Another concern expressed is that both the AEO programme and C-TPAT lack substantial benefits for participating companies. A lower risk score, resulting in fewer controls and inspections, as provided under both programmes, was not considered a sufficient benefit corresponding to the high level of security that companies had demonstrated during the application/validation procedure. More generally, the ICC emphasizes that harmonization, standardization and simplification of procedures and practices are indispensable for achieving mutual recognition, stating that "failure to achieve reasonable uniformity would also create counterproductive, costly and inefficient effects, by subjecting AEO traders to many different and conflicting or redundant national approaches."

The ICC policy paper also identifies a number of specific issues, which may impede the attainment of Mutual Recognition between the European Union and the United States, and which should be addressed and adjusted over a reasonable period of time. In this context, structural asymmetries between the European Union's AEO programme and C-TPAT are noted, as is the need for interoperability in terms of software and electronic messaging between the United States and the European Union and among EU members coupled with single window facilitation so that electronic data elements only need to be submitted once. Emphasis is also placed on the need to adhere to WCO guidelines in order to "ensure the confidentiality of commercial and security-sensitive information, and that information provided be used solely for the purposes for which it was provided".¹¹⁷

Advance electronic cargo notification requirements

Another measure stipulated in regulation (EC) No. 1875/2006 is the requirement of mandatory advance customs notification relating to goods brought into or

out of the customs territory of the European Union. Also known as the “advance cargo declaration scheme”, the system, which in parts corresponds to the United States “24-hour rule”¹¹⁸ adopted in October 2002 with the aim of enabling United States customs authorities to evaluate the terrorist risk of cargo containers loaded at foreign ports, would require economic operators to send manifest information to national authorities 24 hours prior to loading. This requirement was set to become mandatory on 1 July 2009, but in April 2009, the European Commission’s regulation (EC) No. 273/2009 was adopted, introducing a temporary derogation for 18 months, until 31 December 2010, from this requirement to provide advance electronic information for security and safety purposes. The preamble to the regulation states that: “Due to the complexity of the processes for introducing of electronic entry and exit summary declarations, unanticipated delays have occurred in the implementation process so that not all economic operators will be in a position to use information technology and computer networks for these purposes by 1 July 2009. Though information technology and computer networks facilitate international trade, they also require investments in automatic data transmission systems which may cause problems for economic operators in the short term. It is therefore appropriate to take such situations into account by providing that during a transitional period economic operators will be able, but will not be obliged, to lodge electronic entry and exit summary declarations in order to allow them to adjust their systems to the new legal requirements.”¹¹⁹ Understandably, due to the complexity of these processes, the level of computer technology and networks required, as well as the costs involved, many exporters in developing countries face challenges in meeting these requirements.¹²⁰

It should be noted that additional advance cargo notification requirements were also established in the United States in late 2008, when an interim Importer Security Filing rule¹²¹ was issued, known as the “10 + 2” rule. The new interim rule requires importers to notify United States Customs and Border Protection, at least 24 hours before cargo is loaded onto a vessel bound for the United States, of the following information: (a) the name and address of the manufacturer or supplier; (b) the name and address of the seller; (c) the name and address of the buyer; (d) the “ship to” name and address; (e) the container stuffing location; (f) the stuffer’s name

and address; (g) the importer of record number; (h) the consignee number(s); (i) the country of origin; and (j) the commodity’s Harmonized Tariff Schedule of the United States number. Moreover, within 48 hours of the vessel’s departure for the United States, carriers need to provide: (a) the vessel stowage plan; and (b) container status messages. This interim rule was envisaged to come into effect on 26 January 2009, but its compliance date was postponed for 12 months, taking into account difficulties that importers may face in upgrading their systems.¹²²

It appears that China has also informally relaxed the implementation of its 24-hour advance cargo notification requirements, which were supposed to come into effect on 1 January 2009. According to press reports, an ‘informal’ grace period of three to six months without penalties was offered, which was also designed to allow the testing of the systems for reliable eventual compliance.¹²³

(c) *International Maritime Organization*

IMO has been actively involved in the field of maritime security, as a key component in the global fight against terrorism, and in maintaining the security of maritime transport and the global supply chain in general.

Additional advance cargo notification requirements were also established in the United States, in late 2008, when an interim Importer Security Filing Rule was issued.

The Maritime Safety Committee (MSC) held its eighty-fifth session from 26 November to 5 December 2008. Following the outcome of the fifth special meeting of the Counter-Terrorism Committee held in Nairobi from 29 to 31 October 2007,¹²⁴ and in the context

of measures to further enhance port facility security measures, several needs assessments missions on maritime security were carried out under the IMO Integrated Technical Cooperation Programme. In addition, several on-site visits were conducted by the Counter-Terrorism Committee of the United Nations Security Council, pursuant to Security Council resolution 1373 (2001). It was noted that these had revealed that in a significant number of cases, the required national legislation implementing the provisions of the International Convention for the Safety of Life at Sea (SOLAS Convention) chapter XI-2 and of the International Ship and Port Facility Security Code (the ISPS Code) were either absent or inadequate, or were based on or dependent on national laws which, in some cases, had been enacted

at the beginning of the 1900s. Thus, with a view to assisting SOLAS Contracting Governments to improve the situation, the development of model legislation would be very useful. Under SOLAS article III(c), SOLAS Contracting Governments have an obligation to communicate to and deposit with the Secretary-General of IMO, inter alia, the text of laws, decrees, orders and regulations which have been promulgated on various matters within the scope of SOLAS. Therefore, they were urged to do so, in order to enable the development of model legislation.¹²⁵

The MSC, having received and approved, in general, the report of the Ad Hoc Working Group on Maritime Security¹²⁶ (MSC 85/WP.6), also approved MSC.1/Circ.1283 entitled “Guidelines on security aspects of the operation of vessels which do not fall within the scope of SOLAS chapter XI-2 and the ISPS Code”. The guidelines are recommendatory only, and they are not intended to form the basis for a mandatory instrument. They should, therefore, in no way be interpreted as the basis for regulation of non-SOLAS vessels and related facilities.

The MSC, at its eighty-fifth session, also considered matters relating to the implementation of the so-called LRIT system. As was reported in the *Review of Maritime Transport 2008*, SOLAS regulation V/19-1 on a Long-Range Identification and Tracking (LRIT) system, which had been adopted in 2006, entered into force on 1 January 2008. The regulation applies to ships of over 500 gross tons constructed on or after 31 December 2008, with a phased-in implementation schedule for ships constructed before 31 December 2008. The LRIT system was intended to be operational from 31 December 2008,¹²⁷ but delays in the establishment of a number of national data centres were reported by the ad hoc LRIT working group. Therefore, the establishment of the entire LRIT system would continue after 31 December 2008, and it was possible that it could take several months during 2009 before it could be completed. Industry representatives noted that some flag states had been diligent in complying with the requirements of the LRIT system. With regard to equipment conformance tests, identical equipment had worked on some ships but not on others. Overall, there was a 25 per cent failure rate. Secondly, there was concern that the EU Contracting Governments would not be ready until the middle of 2009.¹²⁸ However, a letter from the United States, making

clear that for the time being there would be only carriage requirement enforcement for ships until a reasonable level of operational capability had been achieved, was noted with appreciation.¹²⁹

While it was clear that the system would not be fully operational and that there was a need for a pragmatic approach, the MSC emphasized the importance of compliance with the requirements of regulation V/19-1 and of ensuring that the necessary equipment, especially for ships constructed before 31 December 2008, was installed and able to meet the requirements. The MSC agreed that the date of compliance of ships with the requirements to transmit LRIT information was not subject to extension, and that regulation V/19-1 did not include any provisions on the basis of which extensions may be granted.

Having considered the various issues relating to LRIT, the eighty-fifth session of the MSC established a working

During 2008, work continued on the development of the ISO/PAS 28000 series standards, whose aim is to facilitate and improve controls on flows of transport, to fight smuggling, to deal with the threats of piracy and terrorism, and to enable secure management of supply chains.

group on LRIT-related matters, adopted its terms of reference, and provided detailed instructions for work to be conducted, including the future development of a draft resolution on the appointment of the International Mobile Satellite Organization (IMSO)¹³⁰ as LRIT coordinator within the framework of regulation V/19-1.14.¹³¹ At its eighty-sixth session held from 27 May to 5 June 2009, after considering the

report of the LRIT working group, the MSC adopted the documents entitled “Guidance on the survey and certification of compliance of ships with the requirement to transmit LRIT information”;¹³² “Guidance to search and rescue services in relation to requesting and receiving LRIT information”;¹³³ and the “Circular on information communicated to the IMO in relation to the establishment of LRIT data centres and their position in relation to developmental testing in the production of the LRIT system.”¹³⁴

(d) *International Organization for Standardization*

The ISO/PAS 28000 series of international standards specifies the requirements for security management systems to ensure security in the supply chain. These standards are intended for application by organizations involved in manufacturing, service, storage or transportation, by all modes of transport and at any stage of the production or supply process.

During 2008, work continued on the development of the ISO/PAS 28000 series of standards, whose aim is to facilitate and improve controls on flows of transport, to fight smuggling, to deal with the threats of piracy and terrorism, and to enable secure management of supply chains.

The *Review of Maritime Transport 2008* provided a short description on each of the five latest-published maritime and supply-chain standards, namely ISO 28000, ISO 28001, ISO 28003, ISO 28004 and ISO 20858, and on one standard under development – ISO 28005.

Work has continued on ISO 28005, which in order to expedite development, has been divided into two parts, namely ISO 28005-1: Electronic Port Clearance (EPC) – Single Window Concept; and ISO 28005-2: Electronic Port Clearance (EPC) – Technology and Data Dictionary.

In addition, work is in progress on amendment of ISO 28004, with the aim of:

- (a) providing specific supplemental guidance to small and medium-sized ports that are implementing ISO 28000, so that they develop processes that comply both with its requirements and with the general guidance contained in the existing ISO 28004 standard;
- (b) providing specific supplemental guidance for small and medium-sized businesses (other than marine ports) that are implementing ISO 28000, so that they develop processes that comply both with its requirements and with the general guidance contained in the existing ISO 28004 standard;
- (c) providing specific supplemental guidance for organizations seeking to incorporate security requirements contained in ISO 28001 (for Authorized Economic Operators) into their implementation of ISO 28000. The security best practices contained in ISO 28001 were carefully developed in liaison with WCO, and were designed to be incorporated into existing management systems.

Another standard under development is ISO/AWI 28002: Specification for Security Management for the Supply Chain – Resilience in Security in the Supply Chain. This standard is aimed at ensuring that the suppliers and the

extended supply chain have planned steps to prevent and mitigate the threats and hazards to which they are exposed.

ISO, through technical assistance and training activities derived from the ISO Action Plan for Developing Countries, helps those countries to participate in international standardization activities. It responds to a wide variety of needs and requests received from ISO members in developing countries and their stakeholders, by organizing seminars, workshops, training courses, e-learning, sponsorships etc.¹³⁵

(e) *United Nations*

It should also be noted that pursuant to General Assembly resolutions 61/222 and 62/215, the ninth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held in New York in June 2008, focused its discussions on the area of maritime security and safety.

The meeting participants agreed that maritime security and safety were essential to the role of oceans and seas in promoting the economic, social and environmental pillars of sustainable development, as provided in chapter 17 of agenda 21, adopted by the United Nations Conference on Environment and Development, through, inter alia, international trade, economic development, poverty alleviation and environmental protection. They further agreed that the global nature of the threats and challenges to the security and safety of oceans could only be tackled effectively through international cooperation and coordination.

A number of agreed consensual elements from the meeting were suggested to the United Nations General Assembly for consideration under the agenda item “Oceans and the law of the sea”. With reference to maritime security, it was proposed that the General Assembly:

- (a) “recall that all actions taken to combat threats to maritime security must be in accordance with international law, including the Convention and other relevant international legal instruments while respecting maritime jurisdiction, and reaffirm that the sovereignty and territorial integrity and political independence of states, as well as the principles of non-use or threat of use of force, sovereign equality of states and freedom of navigation, should be respected”; and

- (b) “recognize the crucial role of international cooperation at the global, regional, subregional and bilateral level in combating threats to maritime security in accordance with international law, including through enhanced sharing of information among states relevant to the detection, prevention and suppression of such threats, and the prosecution of offenders with due regard to national legislation, and the need for sustained capacity-building to support such objectives.”¹³⁶

The International Convention for the Safe and Environmentally Sound Recycling of Ships was adopted, under the auspices of IMO.

3. Legal instruments and other developments relating to the environment

IMO continues to implement its ambitious action plan to address emissions of greenhouse gases from international shipping, and to establish a regime regulating the issue at the global level, in order to slow down climate change. IMO’s Marine Environment Protection Committee (MEPC), at its fifty-eighth session, adopted the revised MARPOL¹³⁷ annex VI regulations and the NOx Technical Code 2008, aimed at reducing air pollution from ships. It agreed to establish a working group on greenhouse gas (GHG) emissions from ships, which was instructed to work on a whole package of technical and operational measures.

IMO continues to implement its ambitious action plan to address emissions of greenhouse gases from international shipping, and to establish a regime regulating the issue at the global level, in order to slow down climate change.

The MEPC also finalized the text of the Convention for the Safe and Environmentally Sound Recycling of Ships, which was adopted at a diplomatic conference on 11 May 2009, and it pursued its work related to the Ballast Water Management Convention. In addition, a draft protocol to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea was adopted by the IMO Legal Committee during its ninety-fifth session and the IMO Council, at its 102nd session approved the holding of a diplomatic conference in April 2010, at which the draft protocol will be considered for adoption.

In recognition of the focus that climate change is receiving at IMO, the organization has adopted “Climate change – a challenge for IMO too” as the theme for the 2009 World Maritime Day, which was celebrated on 24 September 2009.

(a) Ship recycling

The International Convention for the Safe and Environmentally Sound Recycling of Ships was adopted, under the auspices of IMO, at a diplomatic conference held in Hong Kong, China, from 11 to 15 May 2009, which was attended by delegates from 63 countries.¹³⁸

As explained in previous editions of the *Review of Maritime Transport*, the development of a convention on ship recycling had been in progress for several years at IMO, in cooperation

with the International Labour Organization (ILO) and the relevant bodies of the Basel Convention. The convention on ship recycling is designed to provide globally applicable ship recycling regulations for international shipping and for recycling activities. It aims to ensure that ships, when being recycled after reaching the end of their operational lives, do not pose any unnecessary risk to human health and safety or to the environment.

The new Convention provides regulations for the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling without compromising the safety and operational efficiency of ships; for the operation of ship recycling facilities in a safe and

environmentally sound manner; and for the establishment of an appropriate enforcement mechanism for ship recycling, incorporating certification and reporting requirements.

Ships to be sent for recycling will be required to carry an inventory of hazardous materials, which will be specific to each ship. An appendix to the Convention will provide a list of hazardous materials, the installation or use of which is prohibited or restricted in shipyards, ship repair yards, and ships of parties to the Convention. Ships will be required to undergo an initial survey to verify the inventory of hazardous materials, additional surveys during the life of the ship, and a final survey prior to recycling. Ship recycling yards will be required to provide a “ship recycling plan” to specify the manner in which each ship will be recycled, depending on its particulars and its inventory. Parties will be required to take effective measures to ensure that ship recycling

facilities under their jurisdiction comply with the Convention. A series of guidelines are being developed to assist in the Convention's implementation.¹³⁹

The Convention shall be open for signature from 1 September 2009 until 31 August 2010. Thereafter, it shall remain open for accession by any state. It will enter into force 24 months after the date on which 15 states – representing 40 per cent of world merchant shipping by gross tonnage – have either signed it without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary-General. Furthermore, the combined maximum annual ship recycling volume of those states must, during the preceding 10 years, constitute not less than 3 per cent of their combined merchant shipping tonnage.¹⁴⁰

(b) *Air pollution from ships*

While maritime transport represents the most fuel-efficient way to carry cargo, international shipping is also heavily dependent on fossil fuels. The combustion of these fossil fuels creates significant emissions, such as nitrogen oxides (NO_x) and sulphuric oxides (SO_x) which have been linked to a variety of adverse public health outcomes,¹⁴¹ and also carbon dioxide (CO₂) which causes global warming. However, it should be noted that bunker fuel emissions from international shipping are not covered by the international regulatory framework as set out in the Kyoto Protocol.¹⁴²

MARPOL 1973/1978, the main international convention dealing with pollution from ships and covering different types of pollution (by oil, chemicals, pollutants in packaged form, sewage and garbage) did not cover air pollution until 1997, when the new annex VI entitled "Regulations for the prevention of air pollution from ships" was adopted at a special conference. MARPOL's annex VI came into force in May 2005, and as at 2 October 2009 it had been ratified by 56 countries, representing approximately 83.46 per cent of the gross tonnage of the world's merchant fleet.¹⁴³ Annex VI deals with SO_x and NO_x emissions and particulate matter, but it does not cover CO₂ emissions, which are subject to separate discussions within IMO.

A revised MARPOL annex VI and the NO_x Technical Code 2008 were adopted unanimously by the MEPC at its fifty-eighth session in October 2008 (resolutions MEPC 176(58) and MEPC 177(58)).¹⁴⁴ Both legal instruments will come into force on 1 July 2010, rather than on 1 March 2010 as had previously been indicated. This is to allow states sufficient time to update existing guidelines and

The Convention shall be open for signature from 1 September 2009 until 31 August 2010.

develop new guidelines as required by the revision. The MEPC also agreed that a definition of sulphur was not needed in the revised annex VI, as this had been described in the test method in ISO 8754: 2003. As regards NO_x

emissions from ships, the MEPC agreed that the definition of marine diesel engine in regulation 2(14) of MARPOL's annex VI and in paragraph 1.3.10 of the NO_x Technical Code should not include engines that under normal service conditions operate on gas fuel only.¹⁴⁵

In addition, the fifty-eighth session of the MEPC noted with appreciation the main findings of phase 1 of an updated 2000 IMO study on GHG emissions from ships,¹⁴⁶ covering a CO₂ emission inventory from international shipping and future emission scenarios. In a second phase, the study covers GHG emissions other than

In a second phase, the study covers GHG emissions other than CO₂ and relevant substances emitted from ships engaged in international transport.

CO₂ and relevant substances emitted from ships engaged in international transport, in accordance with the methodology adopted by the United Nations Framework Convention on Climate Change, as well as consideration of future reduction potentials by technical, operational and market-based measures. The

final report,¹⁴⁷ covering both phases of the study, and an executive summary¹⁴⁸ were made available for consideration by the fifty-ninth session of the MEPC in July 2009. The main conclusions of the report are set out in the executive summary, as follows:

- (a) Shipping is estimated to have emitted 1,046 million tons of CO₂ in 2007, which corresponds to 3.3 per cent of the global emissions during 2007. International shipping is estimated to have emitted 870 million tons of CO₂ in 2007, or about 2.7 per cent of the global emissions.
- (b) Exhaust gases are the primary source of emissions from ships. Carbon dioxide is the most important GHG emitted by ships. Both in terms of quantity and of global warming potential, other GHG emissions from ships are less important.

- (c) Mid-range emissions scenarios show that, by 2050, in the absence of policies, ship emissions may grow by 150 to 250 per cent (compared to the emissions in 2007) as a result of the growth in shipping.
- (d) Significant potential has been identified for the reduction of greenhouse gases through technical and operational measures. Together, if implemented, these measures could increase efficiency and reduce the emissions rate by 25 to 75 per cent below current levels. Many of these measures appear to be cost-effective, although non-financial barriers may discourage their implementation, as discussed in chapter 5.
- (e) A number of policies to reduce GHG emissions from ships are conceivable. This report analyses options that are relevant to the current IMO debate. The report finds that market-based instruments are cost-effective policy instruments with a high environmental effectiveness. These instruments capture the largest amount of emissions under the scope, allow both technical and operational measures in the shipping sector to be used, and can offset emissions in other sectors. A mandatory limit on the Energy Efficiency Design Index for new ships is a cost-effective solution that can provide an incentive to improve the design efficiency of new ships. However, its environmental effect is limited because it only applies to new ships, and because it only incentivizes design improvements and not improvements in operations.
- (f) Shipping has been shown, in general, to be an energy-efficient means of transportation compared to other modes. However, not all forms of shipping are more efficient than all other forms of transport.
- (g) The emissions of CO₂ from shipping lead to positive “radiative forcing” (a metric of climate change) and to long-lasting global warming. In the shorter term, the global mean radiative forcing from shipping is negative and implies cooling; however, regional temperature responses and other manifestations of climate change may nevertheless occur. In the longer term, emissions from shipping will result in a warming response,

as the long-lasting effect of CO₂ will overwhelm any shorter-term cooling effects.

- (h) If the climate is to be stabilized at no more than a 2°C warming over pre-industrial levels by 2100 and emissions from shipping continue as projected in the scenarios that are given in this report, then they would constitute between 12 and 18 per cent of the global total CO₂ emissions in 2050 that would be required to achieve stabilization (by 2100) with a 50 per cent probability of success.

A number of policies to reduce GHG emissions from ships are conceivable.

It should also be noted that the MEPC at its fifty-eighth session agreed to re-establish the Working Group on GHG Emissions from Ships, to work on a whole package of technical and operational measures, aimed at reducing GHG emissions from international shipping. These reductions would be achieved, for new ships through improved design and propulsion technologies, and for all ships, both new and existing, mainly through improved operational practices. The package of measures, focusing on energy efficiency, was finalized at the fifty-ninth session of the MEPC in July 2009 and was intended to be used for trial purposes only, until the sixtieth session of MEPC in March 2010, with a view to further refinement and improvement, taking also into account the relevant outcomes of the United Nations Climate Change Conference to be held in Copenhagen in December 2009.¹⁴⁹ The measures include:

- (a) Interim Guidelines on the method of calculation of the Energy Efficiency Design Index;
- (b) Interim Guidelines for voluntary verification of the Energy Efficiency Design Index;
- (c) Guidance for the development of a ship energy efficiency management plan (SEEMP);
- (d) Guidelines for voluntary use of the Energy Efficiency Operational Indicator.¹⁵⁰

However, MEPC recognized that in view of growth expectations of the world trade technical and operational measures alone would not be sufficient to satisfactorily reduce GHG emissions from international shipping. Therefore, it was considered necessary to also have in place market-based reduction mechanisms that could serve two main purposes: the offsetting of growing ship emissions in other sectors, and the provision of

incentives for the maritime industry to invest in more fuel efficient ships and to operate ships in a more energy-efficient way.

It was also considered that proposed market-based mechanisms, such as a global contribution scheme (levy) and a global emission trading scheme for ships, could generate considerable funds, which could be used for different climate-related purposes, such as mitigation and adaptation activities in developing countries. Several delegations recalled that the principle of “common but differentiated responsibility” needed to be carefully considered and included in any regulatory scheme, in order to make it comprehensive and globally applicable. Some delegations expressed the concern that market-based measures would disadvantage developing countries, by increasing transportation costs, and cautioned that an extensive bureaucracy would be needed to assure compliance and prevent potential fraud.¹⁵¹

After in-depth discussion, the MEPC approved a Work Plan for further consideration of market-based measures.¹⁵² In addition, MEPC agreed that any regulatory scheme on GHG emissions applied to international shipping should be developed and enacted by IMO as the most competent relevant international body.¹⁵³

It is also worth noting that as part of the work of the MEPC, a document was issued in advance of its fifty-ninth session containing excerpts of the first draft negotiating text to be considered by parties at the UNFCCC “climate talks” in June 2009, in the lead-up to the United Nations Climate Change Conference in December 2009, as they refer to international maritime transport.¹⁵⁴ The document contains submissions by IMO parties on long-term cooperative action under the Convention, including proposals and views on possible sources of funding, and on emissions from specific sectors.¹⁵⁵

(c) *Other IMO conventions in the field of environment*

The IMO Legal Committee, during its ninety-fifth session held from 30 March to 3 April 2009, approved a draft protocol to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances

by Sea (HNS Convention). The draft protocol is designed to address practical problems that have prevented many states from ratifying the original Convention. The Convention seeks to establish a two-tier system for compensation to be paid in the event of pollution incidents involving hazardous and noxious substances, such as chemicals. While such a system of compensation has been successfully in operation for many years in respect of oil pollution from tankers, the HNS Convention has not yet entered into force. One of the main obstacles so far to ratification of the Convention appears to have been difficulties associated with the requirement for states to report the quantities they receive of a diverse range of hazardous and noxious substances governed by the Convention.

The IMO Council, at its 102nd session held from 29 June to 3 July 2009, approved the holding of a diplomatic conference in April 2010, for the purpose of considering and adopting the draft protocol.¹⁵⁶

The MEPC at its fifty-eighth session recalled that from 31 May 2005, the International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWM Convention), which deals with harmful aquatic organisms in ballast water, had been open for accession. It noted that three more states had acceded to the Convention since the last session, and urged the other member States to become a Party to this Convention at the earliest possible opportunity. The BWM Convention will enter into force 12 months after ratification by 30 states representing 35 per cent of the world merchant tonnage.¹⁵⁷

The MEPC at its fifty-sixth session had reached the conclusion that only a limited number of ballast water treatment technologies would be available to meet the first implementation date of the BWM Convention, and there were concerns regarding the capability of all ships subject to regulation B-3.3 to meet the D-2 standard in 2009 due to procedural and logistical problems. Following an initiative by the IMO Secretary-General to address these concerns, the IMO Assembly, at its twenty-fifth session, adopted resolution A.1005(25) on the Application of the BWM Convention, which calls on states that have not yet done so to ratify the Convention as soon as possible. In the meantime, the resolution

The IMO Legal Committee, during its 95th session held from 30 March to 3 April 2009, approved a draft protocol to the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).

recommends that ships subject to regulation B-3.3 constructed in 2009 should not be required to comply with regulation D-2 until their second annual survey, but no later than 31 December 2011. The IMO Assembly in this resolution, also requested MEPC to review, not later than at its fifty-eighth session, the immediate availability of type-approved technology for such ships to meet the required standards.

At its fifty-eighth and fifty-ninth sessions, the MEPC granted “basic approval” to six and “final approval” to another six ballast-water management systems. At its fifty-ninth session, MEPC noted that the number of ballast water treatment technologies available had increased significantly to a total of ten systems that had been granted “final approval”. It also recognized that it was not easy to install the ballast water management systems without extensive design consideration, such as physical and technical feasibility, modification of ships designs and the necessary lead time for these modifications. While acknowledging the difficulties, MEPC agreed that ballast water treatment technologies were available and were being fitted on board ships, and confirmed that a number of ballast water management systems would be available to ships constructed in 2010.

MEPC, noting that postponing the dates stipulated in resolution A.1005(25) would not be beneficial to the implementation process, would send the wrong message to the world and would not stimulate the installation of new ballast water technologies on board ships, concluded that no changes to Assembly resolution A.1005(25) were needed with respect to ships constructed in 2010. Recognizing that a proactive approach would best serve the interests of the industry at this stage, MEPC agreed to instruct the Secretariat to prepare a draft MEPC resolution requesting administrations to encourage the installation of ballast water management systems during new ship construction in accordance with the application dates contained in the Ballast Water Management Convention, to be presented to the sixtieth session of MEPC for consideration and adoption.¹⁵⁸

D. STATUS OF CONVENTIONS

There are a number of international conventions affecting the commercial and technical activities of maritime transport, prepared or adopted under the auspices of UNCTAD. Box 3 provides information on the status of each of these conventions, as at 23 October 2009.¹⁵⁹

Box 3

Contracting States parties to selected conventions on maritime transport, as at 23 October 2009

Title of convention	Date of entry into force or conditions for entry into force	Contracting States
United Nations Convention on a Code of Conduct for Liner Conferences, 1974	Entered into force 6 October 1983	Algeria, Bangladesh, Barbados, Belgium, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chile, China, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic Republic of the Congo, Egypt, Ethiopia, Finland, France, Gabon, Gambia, Ghana, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iraq, Italy, Jamaica, Jordan, Kenya, Kuwait, Lebanon, Liberia, Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Montenegro, Morocco, Mozambique, Netherlands, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Sierra Leone, Slovakia, Somalia, Spain, Sri Lanka, Sudan, Sweden, Togo, Trinidad and Tobago, Tunisia, Turkey, United Republic of Tanzania, Uruguay, Venezuela (Bolivarian Republic of), Zambia. (78)
United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules)	Entered into force 1 November 1992	Albania, Austria, Barbados, Botswana, Burkina Faso, Burundi, Cameroon, Chile, Czech Republic, Dominican Republic, Egypt, Gambia, Georgia, Guinea, Hungary, Jordan, Kazakhstan, Kenya, Lebanon, Lesotho, Liberia, Malawi, Morocco, Nigeria, Paraguay, Romania, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Syrian Arab Republic, Tunisia, Uganda, United Republic of Tanzania, Zambia. (34)
International Convention on Maritime Liens and Mortgages, 1993	Entered into force 5 September 2004	Ecuador, Estonia, Lithuania, Monaco, Nigeria, Peru, Russian Federation, Spain, Saint Vincent and the Grenadines, Syrian Arab Republic, Tunisia, Ukraine, Vanuatu. (13)
United Nations Convention on International Multimodal Transport of Goods, 1980	Not yet in force – requires 30 contracting parties	Burundi, Chile, Georgia, Lebanon, Liberia, Malawi, Mexico, Morocco, Rwanda, Senegal, Zambia. (11)
United Nations Convention on Conditions for Registration of Ships, 1986	Not yet in force – requires 40 contracting parties with at least 25 per cent of the world's tonnage as per an- nex III to the Convention	Albania, Bulgaria, Côte d'Ivoire, Egypt, Georgia, Ghana, Haiti, Hungary, Iraq, Liberia, Libyan Arab Jamahiriya, Mexico, Oman, Syrian Arab Republic. (14)
International Convention on Arrest of Ships, 1999	Not yet in force – requires 10 contracting parties	Algeria, Bulgaria, Estonia, Latvia, Liberia, Spain, Syrian Arab Republic. (7)

Source: For official status information, see <http://www.un.org/law>.

ENDNOTES

- ¹ The United Nations General Assembly adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea on 11 December 2008. The General Assembly authorized the opening for signature of the Convention at a signing ceremony to be held on 23 September 2009 in Rotterdam, the Netherlands, and recommended that the rules embodied in the Convention be known as the “Rotterdam Rules”. The text of the Convention, as adopted, is set out in the annex to the General Assembly Resolution A/RES/62/122. It is also contained in annex I of UNCITRAL’s report on its forty-first session, document A/63/17, which is available at <http://www.uncitral.org>. The report itself provides a useful overview of the final discussions, prior to the finalization of the text. All other working documents of Working Group III (Transport) are also available on the UNCITRAL website. Unless otherwise provided, references hereinafter to “articles” relate to provisions in the new Rotterdam Rules.
- ² Article 94. The Convention enters into force on the first day of the month following the expiration of one year after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
- ³ International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924.
- ⁴ International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924 (Hague Rules), as amended by the Visby and SDR protocols of 1968 and 1979.
- ⁵ United Nations Convention on Contracts for the Carriage of Goods by Sea, 1978.
- ⁶ See article 89(3).
- ⁷ Once the Rotterdam Rules have attracted the required number of 20 Contracting States and enter into force, carriage of goods by sea from or to any of the Contracting States may be governed by the Rotterdam Rules or by national law, depending on whether a contract falls within the scope of application of the Rotterdam Rules and on the substantive law which, according to the conflict of law rules of the forum, is held to apply to the dispute. In general, it may be expected that courts in Contracting States to the Hague-Visby Rules would apply neither the Rotterdam Rules nor the Hague-Visby Rules to outward shipments from a Contracting State to the Rotterdam Rules.
- ⁸ The United Nations Convention on International Multimodal Transport 1980 has not attracted the required number of 30 ratifications to enter into force. Several states have, however, adopted national laws on multimodal transportation which are based on the 1980 Convention. See: UNCTAD, “Implementation of multimodal transport rules”, UNCTAD/SDTE/TLB/2 and Add.1. See also: UNCTAD, “Multimodal transport: the feasibility of an international legal instrument”, UNCTAD/SDTE/TLB/2003/1 (available at <http://www.unctad.org/ttl/legal>).
- ⁹ The UNCITRAL Commission, at its thirty-fourth session, created a working group to consider possible uniform regulation in the field of maritime transport. In view of UNCTAD’s involvement with the subject, the Commission specifically provided that the work should be carried out in close cooperation with interested intergovernmental organizations, such as UNCTAD. See also the São Paulo Consensus at paras. 93 and 107 for an express mandate of the UNCTAD secretariat to assist developing countries in the ongoing negotiations.
- ¹⁰ Relevant documentation highlighting potential areas of concern, in particular from the perspective of developing countries, is available on the UNCTAD website at <http://www.unctad.org/ttl/legal>. For an article-by-article commentary on the original draft legal instrument published in 2002, see UNCTAD/SDTE/TLB/4. Much of the analysis remains relevant, even in respect of the final draft text of the Convention. See also: UNCTAD, Carrier liability and freedom of contract under the UNCITRAL draft instrument on the carriage of goods [wholly or partly] [by sea], UNCTAD/SDTE/TLB/2004/2. The documentation is also available on the UNCITRAL website as working documents A/CN.9/WG.III/WP.21/Add.1, A/CN.9/WG.III/WP.41 and A/CN.9/WG.III/WP.46.
- ¹¹ A bibliography of academic writing on the Rotterdam Rules is available on the UNCITRAL website (<http://www.uncitral.org>). For an analytical overview of the Convention, see, for instance: Diamond A (2008), The Next Sea Carriage Convention? *Lloyd’s Maritime and Commercial Law Quarterly (LMCLQ)* 135; and Thomas D R (2008), An appraisal of the liability regime established under the new UN Convention, 14, *Journal of International Maritime Law (JIML)* 496. See also: Sturley M (2008), Transport law for the twenty-first century: an introduction to the preparation, philosophy, and potential impact of the Rotterdam Rules, 14, *JIML* 461. For earlier analysis of different aspects of the draft legal instrument, see the papers of a colloquium held in 2002 in Romsey, published in *LMCLQ* (2004) 304–417; and papers of an international symposium held in 2004 in Hamburg, published in *Transportrecht* (2004) 274–308.
- ¹² On the industry side, strong opposition against ratification of the new Convention has been voiced by the European Shippers’ Council (ESC), which represents the interests of 12 national transport user organizations/shippers’ councils from 12 countries (see the ESC position paper of 24 March 2009 and press release of 29 June 2009, available at <http://www.esc-shippers.org>).

www.europeanshippers.com), and by CLECAT (the European Association for Forwarding, Transport, Logistic and Customs Services), which represents European freight forwarders, logistics service providers and customs agents (see the CLECAT position paper of 29 May 2009, available at <http://www.clecat.org>). According to information in the ESC press release (above), the European Commission too has serious reservations about ratification and intends to release proposals for the development of a EU equivalent later in 2009. The press release refers to a statement made by the head of the European Commission's Directorate-General for Transport and Energy at an ESC seminar on 22 June 2009 in Antwerp, in which he is quoted as noting, *inter alia*, that the new Convention "was not conforming to the European multimodal expectations".

- ¹³ Note, for instance, the conclusions of Thomas D R (2008), *An appraisal of the liability regime established under the new UN Convention*, 14, *JIML* 496, at 511: "The Rules are a formidably comprehensive and complex code, as the survey of the liability regime undertaken in this article amply confirms. Their vulnerability ultimately is not necessarily to be attributed to the legal principles and framework that is propounded but to their suffocating wordiness, careless use of language and persistent refusal to abide by the basic rules of elegant and effective drafting. When the time comes to put the drafting to the test [...] it is suspected that the Rules may be found to be wanting and productive of more disputes than might be considered healthy for the shipping industry." See also: Tetley W (2008), *Some general criticisms of the Rotterdam Rules*, 14, *JIML* 625, at 626.
- ¹⁴ On this aspect, see Diamond A (2008), *The next sea carriage Convention?* *LMCLQ* 135; van der Ziel G (2008), *Delivery of the goods, rights of the controlling party and transfer of rights*, 14, *JIML* 597; Asariotis R (2008), *What future for the bill of lading as a document of title?* 14, *JIML* 75. See also: Asariotis R (2004), *Main obligations and liabilities of the shipper*, *Transportrecht* 284.
- ¹⁵ On this aspect, see Williams R (2008), *Transport documentation under the new Convention*, 14, *JIML* 566. For some analysis of earlier drafts of the text, see also: Clarke M (2002), *Transport documents: their transferability as documents of title; electronic documents*. *LMCLQ* 356; and Schelin J (2004), *Documents*, *Transportrecht* 294.
- ¹⁶ On this aspect, see Goldby M (2008), *Electronic alternatives to transport documents and the new Convention: a framework for future development?* 14, *JIML* 586. For some comments regarding earlier drafts of the text, see also: van der Ziel G (2003), *The legal underpinning of e-commerce in maritime transport by the UNCITRAL Draft Instrument on the Carriage of Goods by Sea*, 9, *JIML* 461.
- ¹⁷ See articles 74 and 78. In general, the rules on jurisdiction and arbitration that are set out in chapters 14 and 15 only apply if a Contracting State declares that it will be bound by them. In the absence of such a declaration, national rules would apply to determine whether contractual choice of a forum is admissible. Both chapters envisage a list of places, at the claimant's choice, for the institution of legal/arbitral proceedings against the carrier. Contractual choice of forum is only permitted in the context of volume contracts, and under certain conditions, but the position of third parties is specially regulated. Whether third parties are bound by a contractual choice of forum depends on the "law of the court seized" (in the case of jurisdiction clauses) or the "applicable law" (in the case of arbitration clauses) and on whether the selected forum is situated in one of the listed places. There is considerable uncertainty associated with the practical application of these provisions in different jurisdictions, which may or may not have opted into the jurisdiction and arbitration chapters. For detailed analysis, see Baatz YM (2008), *Jurisdiction and arbitration under the Rotterdam Rules*, 14, *JIML* 608. On this issue, at an earlier stage of the negotiation process, see also: Berlingieri F (2004), *Freedom of contract under the Rules, Forum and Arbitration Clauses*, *Transportrecht* 303.
- ¹⁸ For some discussion of earlier drafts of the text, see, for instance: Sturley MF (2005), *Solving the scope-of-application puzzle: contracts, trades and documents in the UNCITRAL transport law project*, 11, *JIML* 22; and Rosaeg E (2002), *The applicability of conventions for the carriage of goods and for multimodal transport*, *LMCLQ* 316.
- ¹⁹ Contract of carriage is defined in article 1(1) as a "contract in which the carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage of goods by sea and may provide for carriage by other modes of transport in addition to sea carriage."
- ²⁰ For an analysis of relevant provisions, see Hancock C (2008), *Multimodal transport and the new UN Convention on the carriage of goods*, 14, *JIML* 484. In relation to earlier versions of the draft conventions, see Hoeks M (2008), *Multimodal carriage with a pinch of sea salt: door-to-door under the UNCITRAL draft instrument*, *European Transport Law* 257; Faghfour M (2006), *International regulation of liability for multimodal transport – in search of uniformity*, *World Maritime University (WMU) Journal of Maritime Affairs* 61; Haak KF and Hoeks M (2004), *Arrangements of intermodal transport in the field of conflicting conventions*, 10, *JIML* 422; Clarke M (2003), *A conflict of conventions: The UNCITRAL/CMI draft transport instrument on your doorstep*, 9, *JIML* 28; Czerwenka B (2004), *Scope of application and rules on multimodal transport contracts*, *Transportrecht* 297; and Alcantara JM (2002), *The new regime and multimodal transport*, *LMCLQ* 399.

- ²¹ See the definition of contract of carriage set out in article 1(1): “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to sea carriage”. The definition has been criticized as lacking in precision, as different approaches to the interpretation of the second sentence of the provision appear possible. For some discussion of different approaches to interpretation, see Diamond A (2008), *The next sea carriage Convention? LMCLQ* 135 at 140.
- ²² The substantive scope of application and the provisions regulating the application of the Convention to multimodal transport remained controversial, even at the UNCITRAL Commission meeting at which the final text was agreed, with some States proposing to make the multimodal application of the new international regime optional, or proposing to provide for continued applicability of existing national law. Others expressed concern about the suitability of the substantive liability regime in the context of international multimodal transportation. See A/63/17 at paras. 23, 93–98 and 270–278.
- ²³ *Ibid.*
- ²⁴ In particular the Convention on the Contract for the International Carriage of Goods by Road (1956), as amended by the 1978 Protocol (the “CMR”), the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (appendix B to the Convention concerning International Carriage by Rail, as amended by the Protocol of Modification of 1999 (the “CIM-COTIF”), the Convention for the Unification of Certain Rules for International Carriage by Air 1999 (the “Montreal Convention”), and the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterways, 2000 (the “CMNI”).
- ²⁵ Only the application of existing international conventions (and any relevant future amendments thereto on carrier liability) has been preserved; see article 82. For relevant discussions at the 2008 UNCITRAL Commission session, see A/63/17 at paras. 249–254.
- ²⁶ The term “carrier” is defined in article 1(5), as “a person that enters into a contract of carriage with a shipper”. On carrier liability, see, for instance: Nikaki T (2008), *The fundamental duties of the carrier under the Rotterdam Rules*, 14, *JIML* 512; Honka H (2004), *Main obligations and liabilities of the carrier*, *Transportrecht* 278; and Berlingieri F (2002), *Basis of liability and exclusions from liability*, *LMCLQ* 336.
- ²⁷ Defined in articles 1(7) and (6). Accordingly, a maritime performing party is a party that performs or undertakes to perform any of the carrier’s obligations, at the carrier’s request or under his supervision, “during the period between arrival of the goods at the port of loading and their departure from the port of discharge. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.”
- ²⁸ Liability for delay in delivery only arises in cases where a time for delivery has been agreed in the contract. Delay is defined in article 21: “Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.”
- ²⁹ See article 59, according to which “the carrier’s liability for breaches of its obligations under this Convention is limited to 875 [SDR] per package or other shipping unit or 3 [SDR] per kg of the gross weight of the goods that are subject to the claim or dispute, whichever amount is higher,” except where a higher value of the goods has been declared or a higher limit of liability has been agreed. Note that for potential liability from delay in delivery, a separate limit of 2.5 times the agreed freight applies (article 60). This is similar to the corresponding limit in the Hamburg Rules.
- ³⁰ The relevant limitation amounts under the Hague-Visby Rules and Hamburg Rules are 666.7 SDR/pkg or 2 SDR/kg, and 825 SDR/pkg or 2.5 SDR/kg, respectively.
- ³¹ Note that while there is an express seaworthiness obligation, there is no corresponding obligation in respect of vehicles other than ships that may be used in the performance of the contract.
- ³² Note in particular articles 17(3) (f), (h), (i), (n) and (o). The so-called “nautical fault” exemption has been omitted (cf. article IV r. 2(a) HVR), as has the so-called “catch-all” exemption (article IV, r. 2(q) HVR). The fire exemption (cf. article IV r. 2(b) HVR) has been retained, but it no longer protects the carrier in cases of proven negligence (cf. article 17(4)). Exempting events/circumstances without express parallel in the Hague-Visby Rules include “loading, handling, stowage or unloading of the goods” performed pursuant to a “free in and out stowage” (FIOS)-type agreement which is now expressly permitted under article 13(2), as well as “reasonable measures to avoid or attempt to avoid damage to the environment.” Moreover, the list of events or circumstances includes “acts of the carrier in pursuance of the powers conferred by articles 15 and 16”. Article 15 deals with potentially dangerous cargo and gives the carrier broad rights, “notwithstanding” its obligations regarding delivery of the goods and care of cargo (articles 11 and 13), to dispose of goods. Article 16 gives the carrier a broad right to “sacrifice goods at sea”, “notwithstanding” articles 11, 13 and 14, i.e. irrespective of the carrier’s seaworthiness obligation.

- 33 A “documentary shipper” is defined in article 1(9) as “a person, other than the [contracting] shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.”
- 34 For detailed analysis, see Asariotis R (2008), Burden of proof and allocation of liability for loss due to a combination of causes under the Rotterdam Rules, 14, *JIML* 537. For earlier analysis, see also: UNCTAD (2004), Carrier liability and freedom of contract under the UNCITRAL draft instrument on the carriage of goods [wholly or partly] [by sea], UNCTAD/SDTE/TLB/2004/2; and Asariotis R (2002), Allocation of liability and burden of proof in the draft instrument on transport law, *LMCLQ* 382.
- 35 Ibid. See also: Sturley M (2009) Modernizing and Reforming US Maritime Law: The Impact of the Rotterdam Rules in the United States, 44, *Texas International Law Journal* 427 at 447-448 and Hooper C (a former president of the United States Maritime Law Association and member of the United States delegation to the UNCITRAL Working Group), The Rotterdam Rules – simpler than they appear, *The Arbitrator* 40 (2009) 5, available at http://www.smany.org/sma/pdf/Vol40_No3_Apr2009.pdf.
- 36 The term “shipper” is defined in article 1(8) as “a person that enters into a contract of carriage with a carrier”. On the liability of the shipper, see Baughen S (2008), Obligations of the shipper to the carrier, 14, *JIML* 555 at 564. For analysis of the relevant provisions, as contained in an earlier text of the draft convention, see Asariotis R (2004), Main obligations and liabilities of the shipper, *Transportrecht* 284. See also: Zunarelli S (2002), The liability of the shipper, *LMCLQ* 350.
- 37 Information duties and any potential liability for failure to comply may, in future, become more relevant as a result of international and national regulation to enhance maritime and supply-chain security. Potential losses could arise, for instance, as a result of the delay of a vessel, or due to a failure on the part of the shipper to provide required documentation or information. For some information, see an UNCTAD report published in 2004 entitled “Container security: major initiatives and related international developments” (UNCTAD/SDTE/TLB/2004/1), which is available at <http://www.unctad.org/ttl/legal>.
- 38 See notes 34 and 35, above.
- 39 However, note that a two-year time bar applies to all claims under the Convention, article 62.
- 40 See article 58(2), which states that a “holder” who “exercises any rights under the contract of carriage” also “assumes any liabilities imposed on it under the contract of carriage”. However, it has been argued, with reference to the wording of articles 58(2) and 79(2)(b) that the statutory obligations set out in chapter 7 may be personal to the shipper, and cannot be contractually transferred to a third-party consignee. See Baughen S (2008), Obligations of the shipper to the carrier, 14, *JIML* 555 at 564; and the discussion by Williams R (2008), Transport documentation under the new Convention, 14, *JIML* 566 at 583.
- 41 CIF stands for Cost, insurance and freight. See INCOTERMS 2000, published by the International Chamber of Commerce.
- 42 For an overview of the role and function of different types of transport documents, see UNCTAD: The use of transport documents in international trade, UNCTAD/SDTE/TLB/2003/3, paras. 9–42, available at <http://www.unctad.org/ttl/legal>. For a critical assessment of the approach adopted in the Rotterdam Rules, see the references in note 14, above.
- 43 For analysis of the regulation of volume contract under the Convention, see Asariotis R, UNCITRAL draft convention on contracts for the carriage of goods wholly or partly by sea: Mandatory rules and freedom of contract, in: Antapassis, Athanassiou and Rosaeg eds. (2009), Competition and regulation in shipping and shipping-related industries, *Martinus Nijhoff* 349. On this issue, at an earlier stage of the negotiation process, see also: Berlingieri F (2004), Freedom of contract under the Rules; Forum and Arbitration Clauses, *Transportrecht* 303.
- 44 See article III, r.8 of the Hague Rules and the Hague-Visby Rules and article 23 of the Hamburg Rules.
- 45 Article V of the Hague-Visby Rules and article 23(2) of the Hamburg Rules.
- 46 The mandatory application of the Hague Rules and the Hague-Visby Rules extends to “bills of lading or similar documents of title” (see article I(b) of the Hague-Visby Rules). Non-negotiable seawaybills are not expressly covered. However, as they are also standard form documents, issued by a carrier and operating as a receipt and as evidence of a contract of carriage, the national legislation of some States extends the protection of the Hague Rules and the Hague-Visby Rules to non-negotiable seawaybills. The Hamburg Rules apply to all contracts for the carriage of goods by sea, other than charter parties (articles 1(6), 2(1) and (3) of the Hamburg Rules) and thus include contracts covered by negotiable as well as non-negotiable transport documents. See the UNCTAD report entitled “The use of transport documents in international trade”, UNCTAD/SDTE/TLB/2003/3.

- 47 See chapter 4, table 32.
- 48 For an overview of the genesis of the set of provisions dealing with volume contracts and the relevant debate within the UNCITRAL Working Group, see the final report of the Working Group, A/CN.9/645 at paras. 235–253. Relevant proposals submitted by delegations in the course of the UNCITRAL Working Group deliberations concerning volume contracts are contained in documents A/CN.9/WG.III/WP.34 and 42 (United States), and in document A/CN.9/WG.III/WP.88 (Australia and France). Relevant submissions by Governments to the UNCITRAL Commission at which the text was finalized are available on the UNCITRAL website (under Commission documents for the forty-first session). It should be noted that a number of delegations, including Australia, New Zealand and China, had expressed particular concerns in relation to the treatment of volume contracts. These, however, did not lead to a change in the final text as adopted by the Commission.
- 49 Article 80(2).
- 50 Article 80(4).
- 51 It should again be noted that information duties and any potential liability for failure to comply may, in future, become more relevant as a result of international and national regulation to enhance maritime and supply-chain security – see note 37, above.
- 52 See only the report of the UNCITRAL Working Group on the work of its final session in January 2008, A/CN.9/645, at para. 36.
- 53 While derogations must be set out in the volume contract, incorporation of (standard) terms by reference is permitted; see article 80(2) and (3).
- 54 Article 80(2)(b).
- 55 Article 80(2)(c).
- 56 Article 80(5).
- 57 It should be noted that at the time of writing, ratification of the Convention appears to enjoy the support of carrier representatives such as the European Community’s Shipowners Associations (ECSA), the International Chamber of Shipping (ICS) and the World Shipping Council (WSC), whereas strong opposition has been expressed by the European Shippers’ Council (ESC) and freight forwarders’ organization CLECAT as well as the International Association of Freight Forwarders Associations (FIATA). Position papers by these and some other industry representatives are available on the UNCITRAL website at <http://www.uncitral.org>.
- 58 See also note 13, above.
- 59 See note 17, above, and the accompanying text.
- 60 The 1988 SUA Convention came into force on 1 March 1992. As at 2 October 2009, it had 154 parties, representing 93.45 per cent of world tonnage. Its text can be found at <http://www.admiraltylawguide.com>. For its latest updated status, check the IMO website at <http://www.imo.org>.
- 61 For a description of amendments to the 1988 SUA and its 1988 Protocol adopted in 2005 under the auspices of IMO, see the *Review of Maritime Transport 2006*. As at 2 October 2009, the 2005 amendment to the SUA Convention had not yet entered into force. Only nine Contracting States had become parties, representing 6.01 per cent of world tonnage.
- 62 Reports are issued under the MSC.4/Circ series. Their texts can be found at <http://docs.imo.org>.
- 63 <http://www.icc-ccs.org>
- 64 IMO, in its “Code of practice for the investigation of crimes of piracy and armed robbery against ships” distinguishes “piracy” from “armed robbery against ships”, with “piracy” being restricted to unlawful acts as defined in article 101 of the 1982 United Nations Convention on the Law of the Sea. The code of practice was adopted in November 2001 during the twenty-second session of the IMO Assembly, by resolution A/922(22). For the text of the code, see MSC 74/24/Add.1 – Report of the MSC at its seventy-fourth session, annexes 1–22, annex 18, article 2.2; or MSC/Circ.984; available at <http://www.docs.imo.org>. The ICC International Maritime Bureau (IMB) defines “piracy and armed robbery” as: “an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.” This updated definition covers actual or attempted attacks whether the ship is berthed, at anchor or at sea (<http://www.icc-ccs.org>).
- 65 ICC–IMB Piracy and Armed Robbery Against Ships Report – Annual Report 2008.

- 66 See the *Report of the Maritime Safety Committee on its eighty-fifth session*. MSC 85/26, page 100.
67 MSC.1/Circ.622/Rev.1; MSC.1/Circ.623/Rev.3; and resolution A.922(22).
68 MSC 86/18/1.
- 69 For more information on the discussions held, see the *Report of the Maritime Safety Committee on its eighty-sixth session*, MSC 86/26. For specific changes and updates to the existing guidance, see *ibid.* page 98.
70 MSC.1/Circ.1333 (previously MSC.1/Circ.622/Rev.1).
71 MSC.1/Circ.1334 (previously MSC.1/Circ.623/Rev.3).
72 MSC.1/Circ.1302
73 Resolution A.922(22).
74 Resolution A.1002(25) on “Piracy and armed robbery against ships in waters off the coast of Somalia” (<http://docs.imo.org>).
- 75 See the ICC–IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2009.
76 See, for example, information on the work of the United Nations Office on Drugs and Crime (UNODC) and the United Nations Commission on Crime Prevention and Criminal Justice (<http://www.unodc.org>). See also: “Piracy must be defeated in courts, ports and banks, not just at sea”, editorial by Antonio Maria Costa, UNODC Executive Director, *Lloyd’s List*, 5 February 2009.
- 77 The texts of the resolutions can be found at the United Nations Security Council website, <http://www.un.org/docs/sc>.
78 See S/RES/1846/2008, adopted on 2 December 2008, para. 19.
79 For the text of the establishing statement, see <http://www.marad.dot.gov>. Participating in the meeting were representatives from Australia, China, Denmark, Djibouti, Egypt, France, Germany, Greece, India, Italy, Japan, Kenya, the Netherlands, Oman, the Republic of Korea, the Russian Federation, Saudi Arabia, Somalia (Transitional Federal Government), Spain, Turkey, the United Arab Emirates, the United Kingdom, the United States and Yemen, as well as the African Union, the European Union, the North Atlantic Treaty Organization, the United Nations Secretariat and the International Maritime Organization. Additionally, Belgium, Djibouti, Norway, Portugal, Sweden and the Arab League, joined the Contact Group. See also the UNODC press release from 20 January 2009 entitled “Ship riders”: tackling Somali pirates at sea.
- 80 IMO circular letter no. 2933, 23 December 2008. According to IMO document LEG 96/7/Corr.1, as at 23 September 2009 replies had been received from Argentina, Australia, Azerbaijan, the Bahamas, Belgium, Brazil, Chile, Colombia, Denmark, Ecuador, Estonia, Germany, Greece, Guatemala, Iran (Islamic Republic of), Italy, Jamaica, Japan, Mexico, Morocco, New Zealand, Peru, the Philippines, the Republic of Korea, the Russian Federation, Spain, Sri Lanka, Thailand, The United States and Uruguay. Hong Kong (China) also submitted its legislation. It was noted that some replies to the circular letter provided a summary of the national law rather than the text of current legislation.
- 81 For further information, see <http://www.mschoa.org>.
82 See the ICC–IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2009, page 31. See also: New ‘hunters’ stalk pirates, *Fairplay*, 15 January 2009.
83 Security Council resolution 1846 of 2 December 2008 welcomes initiatives by Canada, Denmark, France, India, the Netherlands, the Russian Federation, Spain, the United Kingdom and the United States of America, pursuant to earlier Security Council resolutions.
84 ICC–IMB Piracy and Armed Robbery Against Ships Report – First Quarter 2009, page 31.
85 See <http://www.wcoomd.org>.
86 SAFE Framework of standards to secure and facilitate global trade, rev. June 2007: 6, footnote 1.
87 See SAFE Framework, rev. June 2007, subsection 5.2: 37.
88 APEC’s member states are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong (China), Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Republic of Korea, the Russian Federation, Singapore, Thailand, the United States and Viet Nam.
89 For instance Australia, Canada, China, Japan, New Zealand, Singapore and the United States.
90 Among the member states of the European Union, Germany, the Netherlands, Sweden and the United Kingdom are

listed as the most advanced countries in issuing certificates.

⁹¹ Argentina, Canada, China, Japan, Jordan, New Zealand, Norway, the Republic of Korea, Singapore and the United States. In addition, an AEO programme will start in Morocco.

⁹² Australia, Botswana, Chile, Mexico, Serbia, and the former Yugoslav Republic of Macedonia.

⁹³ The first bilateral mutual agreement relating to AEOs was the United States–New Zealand Mutual Recognition Agreement, announced in June 2007 (see the press release entitled U.S., New Zealand establish joint trade security arrangement, 29 June 2007 (<http://www.cbp.gov>). In June 2008, the United States signed an arrangement with Canada on mutual recognition of the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Partners in Protection programme (PIP). The PIP is comparable to the C-TPAT and the EU's AEO programme; see the Canada Border Services Agency website at <http://cbsa-asfc.gc.ca>. The other five MRAs are United States–Jordan, Japan–New Zealand, United States–Japan, EU–Switzerland and EU–Norway.

⁹⁴ Andorra and San Marino.

⁹⁵ See the speech by the Secretary-General of the WCO at the International Transport Forum 2009, IRU workshop, Leipzig, 27 May 2009, available at <http://www.wcoomd.org>.

⁹⁶ WCO Columbus Programme brochure – Enhancing the global dialogue on capacity-building. See also the Capacity-building development compendium, a Columbus Programme phase 2 implementation tool, which is available at <http://www.wcoomd.org>.

⁹⁷ These countries are Azerbaijan, Brazil, Burkina Faso, China, the Dominican Republic, Egypt, Hong Kong (China), Hungary, India, Japan, Kenya, Lebanon, Malaysia, the Russian Federation, South Africa and Zimbabwe. See: <http://www.wcoomd.org>.

⁹⁸ For more information, see: WCO News, No. 58, February 2009, <http://www.wcoomd.org>.

⁹⁹ The text of the report can be found at the WCO website at <http://www.wcoomd.org>.

¹⁰⁰ For more information, see the report “Customs in the twenty-first century: Enhancing growth and development through trade facilitation and border security”, available at <http://www.wcoomd.org>.

¹⁰¹ Ibid.

¹⁰² Regulation No. 1875/2006 is contained in the *Official Journal* L 360, 19 December 2006: 64.

¹⁰³ A number of guidance documents and tools have been prepared by the European Commission, including detailed AEO guidelines published in June 2007, a common framework for risk assessment of economic operators called COMPACT which was published in June 2006, an AEO self-assessment tool, and an AEO e-learning tool. The AEO guidelines (TAXUD/2006/1450) and the AEO compact model (TAXUD/2006/1452) are available at <http://ec.europa.eu>.

¹⁰⁴ See article 1.12 of regulation (EEC) no. 2454/93, as amended by article 1 of regulation (EC) no. 1875/2006.

¹⁰⁵ See AEO Guidelines (TAXUD/2006/1450): 8.

¹⁰⁶ For updates, see http://ec.europa.eu/taxation_customs/dds/cgi-bin/aeoquery?Lang=EN.

¹⁰⁷ Information provided by the EU Secretariat, DG Taxation and Customs Union.

¹⁰⁸ OJ.L 98/3 of 17 April 2009 (<http://eur-lex.europa.eu>).

¹⁰⁹ For further information, see <http://ec.europa.eu>.

¹¹⁰ See the Guidelines on EORI, TAXUD/2008/1633 rev. 1.9, issued on 14 May 2009. For information concerning the authorities in member states responsible for assigning EORI numbers, see information on the European Commission's website (<http://ec.europa.eu>). In addition, an e-learning tool on EORI will soon be available on the same website.

¹¹¹ In particular, Andorra, China, Japan, and San Marino. Negotiations with Canada are also to begin. For more information see the European Commission website (<http://ec.europa.eu>). See also the *Review of Maritime Transport 2008*.

¹¹² See the ICC discussion paper “ICC recommendations on mutual recognition of US–EU trade partner programmes for border security”, fourth revision, 23 January 2009, available at <http://www.iccwbo.org>.

¹¹³ Press release, 27 March 2008. For further information, see the United States Customs and Border Protection website at <http://www.cbp.gov>.

¹¹⁴ European Commission, Taxation and Customs Union press release. “United States Customs and Border Protection and European Commission adopt the joint roadmap towards mutual recognition trade partnership programmes”, 27 March 2008.

- ¹¹⁵ Abridged external partner version of the United States–European Union Joint Customs Cooperation Committee roadmap towards mutual recognition of trade partnership programmes. The text is available on the Customs and Border Protection website at <http://www.cbp.gov>.
- ¹¹⁶ ICC discussion paper “ICC recommendations on mutual recognition of US–EU trade partner programmes for border security”, fourth revision, 23 January 2009, available at <http://www.iccwbo.org>.
- ¹¹⁷ WCO AEO Guidelines, Section F(a).
- ¹¹⁸ For further information on the United States 24-hour rule, see <http://www.cbp.gov>. See also the UNCTAD report entitled “Container security: Major initiatives and related international developments” (UNCTAD/SDTE/TLB/2004/1) at <http://www.unctad.org/ttl/legal>.
- ¹¹⁹ Commission regulation (EC) no. 273/2009 of 2 April 2009, laying down provisions for the implementation of Council Regulation (EEC) no. 2913/92 establishing the Community Customs Code, derogating from certain provisions of Commission Regulation (EEC) no. 2454/93. *Official Journal of the European Union*. L 91/14, <http://eur-lex.europa.eu>.
- ¹²⁰ In this context, see, for instance, the UNCTAD report entitled “Maritime security: ISPS implementation, costs and related financing (UNCTAD/SDTE/TLB/2007/1), reflecting the results of a survey conducted by the secretariat which showed that the costs of compliance with the ISPS Code were proportionately higher for smaller ports.
- ¹²¹ For the text, see <http://edocket.access.gpo.gov/2008/pdf/E8-27048.pdf>, where earlier comments by stakeholders are also addressed.
- ¹²² For further information, see also the frequently asked questions document, last updated on 23 January 2009, which is available at <http://www.cbp.gov>.
- ¹²³ See: “China ‘amnesty’ on 24-hour electronic manifest rule”, *Lloyd’s List*, 7 January 2009.
- ¹²⁴ For further information, see the *Review of Maritime Transport 2008*.
- ¹²⁵ See the *Report of the Maritime Safety Committee on its eighty-fifth session*, MSC 85/26, 18 December 2008, available at <http://docs.imo.org>.
- ¹²⁶ The Ad Hoc Working Group on Maritime Security was re-established at the eighty-third session of the MSC. See the *Review of Maritime Transport 2008*.
- ¹²⁷ For further information on the LRIT and relevant decisions at earlier sessions of the MSC, see the *Review of Maritime Transport 2008*.
- ¹²⁸ According to a press release from the European Maritime Safety Agency (<http://www.emsa.europa.eu>), the EU LRIT Data Centre entered into production on 1 June 2009, following successful developmental testing. The participating countries/territories are: Aruba, Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Germany, Greece, Greenland, Finland, France, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, the Netherlands Antilles, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
- ¹²⁹ See the Report of the Maritime Safety Committee on its eighty-fifth session, MSC 85/26, 18 December 2008, <http://docs.imo.org>.
- ¹³⁰ The IMSO, which was created to launch and run services related to IMO’s global maritime distress and safety system, has taken a lead role in the development of the LRIT system, becoming the official LRIT coordinator. MSC 84 had requested “IMSO acting as LRIT Coordinator to authorize, on behalf of and subject to consideration and approval, acceptance or endorsement of the action by the Committee, the integration, on an interim basis, of the data centres that have undergone and satisfactorily completed developmental testing into the production LRIT system”. See the Report of the Maritime Safety Committee on its eighty-fifth session, MSC 85/26.
- ¹³¹ For detailed instructions given, see the Report of the Maritime Safety Committee on its eighty-fifth session, MSC 85/26: 58–59.
- ¹³² MSC.1/Circ.1307.
- ¹³³ MSC.1/Circ.1308.
- ¹³⁴ MSC.1/Circ.1309. For more information on the discussions held, see the Report of the Maritime Safety Committee on its eighty-sixth session, MSC 86/26: 33–49.
- ¹³⁵ For more information, see the ISO website at http://www.iso.org/iso/developing_countries.

- 136 For further information see the “Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its ninth meeting”, A/63/174, 28 July 2008 (<http://ods.un.org>).
- 137 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL).
- 138 The conference also adopted six resolutions, including resolutions on future work pertaining to the Convention, on early implementation of the Convention and on the exploration and monitoring of the best practices for fulfilling the Convention requirements.
- 139 See resolution 4 adopted by the Conference.
- 140 Article 17 of the Convention.
- 141 Increased risk of premature death from pulmonary diseases and worsened respiratory diseases.
- 142 “Report of the Marine Environment Protection Committee on its fifty-seventh session”, MEPC 57/21, 7 April 2008. See also the website of the United Nations Framework Convention on Climate Change at http://unfccc.int/methods_and_science/emissions_from_intl_transport/items/1057.php.
- 143 For updated status, see <http://www.imo.org>.
- 144 For the text of the resolutions, see MEPC 58/23/Add.1. For the content of the amendments endorsed earlier on SO_x and NO_x emissions and particulate matter, see the *Review of Maritime Transport 2008*.
- 145 See the Report of the Marine Environmental Protection Committee at its fifty-eighth session, MEPC 58/23 (<http://docs.imo.org>).
- 146 In this context, see documents MEPC 58/4/2 and MEPC 58/4/4.
- 147 MEPC 59/INF.10.
- 148 MEPC 59/4/7.
- 149 See the Report of the Marine Environmental Protection Committee at its fifty-ninth session, MEPC 59/24.
- 150 Ibid. Annexes 17-20.
- 151 Ibid., page 44-50.
- 152 Ibid., Annex 16.
- 153 MEPC 59/24 at para. 4.107.
- 154 MEPC 59/4/40. This complements the information on the ongoing process within the UNFCCC contained in documents MEPC 59/4 and MEPC 59/INF.29.
- 155 Further information on draft negotiating texts and other relevant submissions by Parties can be found in annexes 1, 2 and 3 of document MEPC 59/4/40.
- 156 See IMO Council document C.102/D, 9 July 2009, Summary of decisions. For the text of the draft protocol, see the Report of the Legal Committee on the work of its ninety-fifth session, LEG 95/10, annex 3.
- 157 According to information provided on the IMO website, as at 2 October 2009, 18 states had become members of the BWM Convention, representing 15.36 per cent of world tonnage.
- 158 See the Report of the Marine Environmental Protection Committee at its fifty-ninth session, MEPC 59/24, page 16.
- 159 Up-to-date and authoritative information on the status of international conventions is available from the relevant depository. For United Nations conventions, see the United Nations website at <http://www.un.org/law>. This site also provides links to a number of websites of other organizations, such as IMO (<http://www.imo.org>), ILO (<http://www.ilo.org>) and the United Nations Commission on International Trade Law (<http://www.uncitral.org>), containing information on conventions adopted under the auspices of each of them. Since the last reporting period, four States, namely Bulgaria, Denmark, Germany and the United Kingdom, have given their notifications of denunciation of the United Nations Convention on a Code of Conduct for Liner Conferences, 1974.